



Maastricht University

Enshrining Climate Neutrality in the EU:

*a discussion on the choice between a collective and
national targets of climate neutrality from an EU law
perspective*

Author: Laura Herreras Bartolomé

Supervisor: Prof. Dr. Marjan Peeters

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Maastricht University

Faculty of Law

LLM European Public Law and Governance

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Abstract

In 2020 the Commission presented the Proposal for the European Climate Law aiming to enshrine climate neutrality in the EU in legally binding terms. Although the EU institutions agreed on this common goal, they did not agree on the terms. For the Commission and the Council, climate neutrality was to be achieved at Union level, while for the European Parliament, at Member State level. In the end, the co-legislators agreed upon a collective target of climate neutrality, which is codified in the recently adopted European Climate Law.

Drawing on this difference between collective and national climate neutrality targets, this thesis intends at creating a discussion on how these approaches are to be understood, particularly in view of EU primary law and recent governance and litigation developments. On this basis, this thesis presents what are the reasons of the EU institutions to defend a diverging climate neutrality target and analyses the compatibility of both approaches with primary law. Lastly, this thesis examines the position of both forms of climate neutrality in the EU, given the adoption of the European Climate Law and recent developments in national legislation and climate litigation in the national and European spheres. The findings of this study show that, even though the European Climate Law has codified a collective climate neutrality target, climate neutrality at Member State level may play a significant role in the following decades.

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Abbreviations

AG	Advocate General
CJEU	Court of Justice of the European Union
CoR	Committee of the Regions
ECHR	European Convention of Human Rights
ECL	European Climate Law
ECtHR	European Court of Human Rights
EESC	European Economic and Social Committee
EP	European Parliament
EU	European Union
EU ETS	EU Emission Trading Scheme
ESR	Effort Sharing Regulation
GHG	Greenhouse gas(es)
NDC	Nationally Determined Contribution
IPCC	Intergovernmental Panel for Climate Change
LULUCF	Land use, land-use change, and forestry
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

1. INTRODUCTION

Since the early 1990s, the European Union (EU) has presented itself as a leader on environmental and climate action.¹ Indeed, first by taking harmonization measures in the field of internal market or as part of environmental policy (arts. 191 – 193 TFEU), and later by making use of the specific legal basis provided for by the Treaty of Lisbon in the field of energy policy (art. 194 TFEU), the EU has been an active actor for the protection of the environment.² What is more, it has led international negotiations towards increasing climate ambition,³ it has unilaterally adopted relatively ambitious climate legislation packages,⁴ and it has even tried to regulate emissions outside its own territory.⁵

Despite these efforts, the problem of climate change has not but increased in the last decades. Heat waves, melting glaciers, droughts and degrading ecosystems are just some of the threatening forms of the climate crisis.⁶ Human-produced greenhouse gases (GHG) such as carbon dioxide, methane, and nitrous oxide, are estimated to have caused much of the observed increase in Earth's temperature over the past 50 years.⁷ In this context, the Paris Agreement was ratified as the cornerstone of the global response to climate change, establishing for the first time a 'degrees Celsius' target of holding the temperature rise to '2°C above pre-industrial levels, pursuing efforts to limit it to 1.5°C'.⁸ To accomplish these goals, the Parties are collectively required to reach a global peak of

¹ Killian Bertil and Olga Elgström, 'Still a green leader? The European Union's role in international climate negotiations' (2010) 45 *Cooperation and Conflict* 255

² For an overview, see Marcin Stoczkiewicz, 'The Climate Policy of the European Union from the Framework Convention to the Paris Agreement' (2018) 15 *Journal for European Environmental & Planning Law* 42

³ Sebastian Oberthür and Claire Roche Kelly, 'EU Leadership in International Climate Policy: Achievements and Challenges' (2008) 43 *The International Spectator* 35

⁴ Stoczkiewicz (op. cit.) 42-68

⁵ In the field of aviation, the EU tried to introduce emissions from all flights departing from or arriving at the European Union in the EU Emissions Trading Scheme, unsuccessfully. For more information, see Christina Voigt, 'Up in the Air: Aviation, the EU Emissions Trading Scheme and the Question of Jurisdiction' (2012) 14 *Cambridge Yearbook of European Legal Studies* 475

⁶ The precise causality is yet to be further determined by science, as the IPCC Special Report of 2018 shows.

⁷ NASA, 'The Causes of Climate Change' (Global Climate Change, 25 January 2021) <<https://climate.nasa.gov/causes/>> accessed 28 January 2021, referring to the Fifth Assessment Report of the Intergovernmental Panel for Climate Change, available at <https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf>

⁸ Article 2 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016)

GHG emissions as soon as possible and to achieve net-zero emissions in the second half of this century.⁹

However, current emission records and projections are incompatible with this target. According to the Intergovernmental Panel on Climate Change (IPCC) Special Report of 2018, without stepping up climate action, global average temperature increase could reach 2°C soon after 2060 and continue rising afterwards. In fact, the report warns of the need to limit global warming to 1.5°C compared to 2°C to reduce the likelihood of extreme weather events, only reachable if GHG emissions are reduced to net zero globally around 2050.¹⁰

In this context, the EU positions itself at the forefront of global climate action, committed to ‘continuing leading the global fight against climate change’.¹¹ The now President of the European Commission, Ursula von der Leyen, made it clear in her discourse before the Parliament in 2019: ‘I want Europe to become the first climate-neutral continent in the world by 2050’.¹² Accordingly, the Commission adopted the European Green Deal, the ‘man on the moon’ moment of Europe,¹³ an ambitious programme with the political commitment to achieve climate neutrality within the EU by 2050. This goal, endorsed by the European Council,¹⁴ the European Parliament (EP),¹⁵ and the Council, is now the

⁹ Article 4(1) Paris Agreement. See also Alexander Zahar, ‘Collective obligation and individual ambition in the Paris Agreement’ (2020) 9(1) *Transnational Environmental Law* 165

¹⁰ IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. World Meteorological Organization, Geneva, Switzerland, p 32

¹¹ ‘The European Union Continues to Lead the Global Fight against Climate Change’ (Press Corner European Commission, 11 September 2019), available at <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5534> accessed 18 January 2021

¹² ‘Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission’ (Press Corner European Commission website, 16 July 2019), available at <https://ec.europa.eu/commission/presscorner/detail/en/speech_19_4230> accessed 18 January 2021

¹³ The Commission President Ursula von der Leyen during an extraordinary session to present a Green Deal plan, at the European Parliament in Brussels, Belgium, December 11, 2019, available at <<https://www.france24.com/en/20191211-eu-european-union-climate-change-green-deal-carbon-neutrality-2050-von-der-leyen-greta-thunberg-un-united-nations-commission-fossil-fuels-carbon-biodiversity-man-on-the-moon>>

¹⁴ Conclusions of the European Council meeting on 12 December 2019, EUCO 29/19, available at <<https://data.consilium.europa.eu/doc/document/ST-29-2019-INIT/en/pdf>>

¹⁵ European Parliament resolution of 14 March 2019 on climate change – a European strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy in accordance with the Paris Agreement (2019/2582(RSP)).

long-term strategy of the EU and its Member States under the Paris Agreement.¹⁶ In this line, the Commission presented in March 2020 the proposal for the ‘first’ European Climate Law,¹⁷ transforming this political will into legally binding terms and establishing a framework for achieving climate neutrality. Thirteen months later, in April 2021, the co-legislators reached an agreement on the European Climate Law,¹⁸ setting for once and for all the climate ambition of the EU in line with the Paris Agreement: the EU shall become climate neutral by 2050.¹⁹

Nonetheless, this was not an easy path: the legislative process showed that even though the actors agreed on the goal, they did not agree on the terms. On the one hand, the Commission and the Council advocated an EU-wide target, with climate neutrality to be achieved domestically within the Union. On the other hand, the European Parliament defended a national-wide binding target, meaning that all Member States would be bound to achieve climate neutrality by 2050 in their territories. In the end, the co-legislators agreed upon a collective target of climate neutrality, which is now enshrined in Article 2 ECL. However, recent developments in strategic climate litigation point towards a trend in which national governments are increasingly, and successfully, brought before regional and especially national courts to follow sufficient climate ambition.²⁰ This brings the possibility that national governments would have to take more stringent climate action in their territories, which could include achieving climate neutrality. Therefore, climate neutrality at the national level could, despite its rejection in the European Climate Law,

¹⁶ UNFCCC, NDC registry, available at <<https://www4.unfccc.int/sites/ndcstaging/Pages/Party.aspx?party=EUU&prototype=1>> (consulted on 31 December 2020). The European Council endorsed this target in its meeting from 10-11 December 2020, see <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>.

¹⁷ Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)’ COM (2020) 80 final. However, this is not the first legislative action on climate at EU level, as it is pointed out in: Delphine Misonne and Marjan Peeters, ‘The European Union and its rule creating force at the European continent for moving to climate neutrality in 2050’, DRAFT PAPER dd 27 January 2021, p. 12

¹⁸ Provisional agreement on the Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999, (European Climate Law), available at <<https://data.consilium.europa.eu/doc/document/ST-8440-2021-INIT/en/pdf>> (hereinafter, the ‘European Climate Law’ or ‘ECL’)

¹⁹ Article 2 European Climate Law.

²⁰ See Ivano Alogna, Christine Bakker and Jean-Pierre Gauci, ‘Climate Change Litigation: Global Perspectives – an Introduction’ in: Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.) *Climate Change Litigation: Global Perspectives* (Brill | Nijhoff, 2021)

still play a role in the following decades.²¹ Given the present and future relevance of both approaches to climate neutrality, this presents a timely opportunity to explore the (potential) implications of climate neutrality in its two forms as presented by the EU institutions in the framework of the legislative process of the European Climate Law. Against this background, and taking the institutions' position on the Proposal for a European Climate Law and the agreement on the European Climate Law as the bases for our analysis, this thesis aims at solving the following research question: *How can the two different positions regarding the climate neutrality target, namely climate neutrality at Union and at Member State level, as presented by the EU institutions in the framework of the legislative process of the European Climate Law, be understood, particularly in view of EU primary law and in view of governance and litigation developments?*

To answer this main question, three sub-research questions are formulated, which correspond with each of the sections of this thesis. Firstly, what are the driving forces of the EU institutions to propose climate neutrality at Union and at Member State level? Secondly, to what extent are the two forms of the climate neutrality target presented by the EU institutions compatible with EU primary law? Lastly, what is and could be the position of the two forms of climate neutrality in light of the agreement on the European Climate Law and governance and litigation developments?

Methodological approach and structure

To answer these questions, on a first stage, and given the novelty of the European Climate Law, an explorative research will be conducted based on document analysis to obtain clarity on the grounds for the different position of the EU institutions towards the climate neutrality target. Accordingly, preparatory documents accompanying the legislative process towards the adoption of the European Climate Law will be analysed. This will be complemented with the consultation of reports from the European Parliamentary Research Service, organisations and think tanks related to the legislative process to expand an understanding on the field.

²¹ Given that national governments will be brought (successfully) before their national courts for taking more stringent climate action

On a second stage, a doctrinal legal research will be conducted to assess the compatibility of the collective and national targets as presented by the EU institutions with EU primary law. It is to be noted that this analysis will be conducted using the Proposal and the co-legislators' position on first reading instead of the agreement on the European Climate Law, given that this approach allows for a comparison between the institutions' positions on the matter that cannot be achieved when only taking the agreement on the European Climate Law under consideration. The same methodology (doctrinal legal research) will be used for holding a discussion on the (potential) role of the two forms of climate neutrality given the agreement on the European Climate Law and recent governance and litigation developments.

Following this methodology, this thesis is structured as follows. Drawing on the preparatory documents of the legislative proposal, Section 2 introduces the concept of climate neutrality and dives into the question of what driving forces are at the core of the institutions' positions. Section 3 delves into analysing the compatibility of the two proposed targets with primary law by creating a discussion on the principle of conferral and the potential use of Article 193 TFEU as the basis for more stringent protective measures. Section 4 presents climate neutrality as enshrined in the agreement on the European Climate Law and discusses the position of the two forms of climate neutrality given recent governance and litigation developments. Finally, conclusions are drawn from this analysis aimed at answering the main research question.

As a final remark, it should be noted that the results will be presented based on sources available up to, and including, May 2021. This includes the provisional agreement on the European Climate Law,²² which has been the basis for the analysis of the European Climate Law in Section 4. Nonetheless, it should be noted that the European Climate Law has been adopted and published in the Official Journal in July 2021,²³ and the text is the same as the provisional agreement. Therefore, the terms 'agreement on the European Climate Law', and 'European Climate Law' (ECL) will be used indistinctively, but this research has been performed using the agreement on the European Climate Law.

²² Provisional agreement on the Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (op. cit.)

²³ Regulation (EU) 2021/1119 of the European Parliament and of The Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 [2021] OJ L 243/1

2. THE PROPOSAL FOR A EUROPEAN CLIMATE LAW: ONE GOAL, TWO DIFFERENT APPROACHES TO THE CLIMATE NEUTRALITY TARGET

In this section, the Proposal for a European Climate Law and the different actors' position on it are analysed to extract the driving forces of the diverging views on the climate neutrality target. Accordingly, the first sub-section (2.1) presents the definition of climate neutrality as understood by the actors involved in the legislative process. The second sub-section (2.2) delves into the reasons why there are diverging positions with respect to the form of the climate neutrality target. This section therefore aims at answering the first sub-research question and sets the ground for the analysis of the proposed targets in view of EU law and litigation and governance developments.

2.1. Analysis of a common goal: Climate Neutrality in the EU

On March 2020, the European Commission presented the Proposal for a European Climate Law (hereinafter 'the Proposal'),²⁴ cornerstone of the political promises of the European Green Deal. Continuing the *rule-based* approach applied by the EU towards addressing climate change,²⁵ Article 1 of the Proposal sets out 'a binding objective of climate neutrality in the Union by 2050'. This new goal reflects the EU's commitment with the Paris Agreement, which, although not expressly using the term 'climate neutrality' in its wording, reflects the parties' commitment to 'achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century'.²⁶

²⁴ Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)' COM (2020) 80 final

²⁵ Delphine Misonne and Marjan Peeters (op. cit.), p. 15

²⁶ Article 4(1) Paris Agreement

Following the ordinary legislative procedure, both the European Parliament and the Council presented their amendments,^{27,28} and both the European Economic and Social Committee (EESC) and the Committee of Regions (CoR) delivered their opinions.^{29,30} From a joint reading of all the documents, it can be concluded that this new long-term direction of the EU was based on broad political consensus within the EU institutions and counted with the approval of the consultative bodies.³¹ The will to enshrine climate neutrality in legally binding terms was, therefore, beyond a shadow of doubt. But, what does climate neutrality, in light of the Proposal and the co-legislators' amendments, mean?

The climate-neutrality objective is enshrined in Article 2 of the Proposal, according to which 'Union-wide emissions and removals of greenhouse gases regulated in Union law shall be balanced at the latest by 2050, thus reducing emissions to net zero by that date'. A net-zero target can be defined as a 'balance', which alludes to an equilibrium concept where 'flows of GHGs into and out of the atmosphere are balanced to minimize further anthropogenic perturbation of the climate'.³² As an example, climate neutrality could mean relying 100% on domestic reductions and no removals, but it could also mean large

²⁷ Amendments adopted by the European Parliament on 8 October 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] P9_TA 0253 (position on first reading) (hereinafter, 'the Parliament's amendments to the Proposal')

²⁸ Amendments adopted by the Council of the European Union on 17 December 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] 14171/20 (position on first reading) (hereinafter, 'the Council's amendments to the Proposal')

²⁹ Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] NAT/784

³⁰ Opinion of the European Committee of the Regions 324/10 — European Climate Law: establishing the framework for achieving climate neutrality [2020] OJ C324/58

³¹ To reach this conclusion, an examination of the institutions and consultative bodies' position as regards the goal of achieving climate neutrality in 2050 has been conducted (using the documents referred to in footnotes 25-28). We have taken a closer look at any changes on Articles 1 and 2(1) of the Proposal, as they establish the climate neutrality objective by 2050. In this regard, none of the institutions nor consultative bodies present substantive amendments to the target of climate neutrality in 2050. Either they remain silent, thus accepting the Commission's Proposal, or they make slight amendments that do not change the substance of the target (for example, specifying that climate neutrality should be achieved 'at the latest in 2050' instead of 'by 2050' (European Parliament), or that the emissions covered by the Regulation are anthropogenic emissions 'by sources' (Council)). On the contrary, the core of the amendments and opinions go in the direction of changing specific characteristics of the path towards climate neutrality.

³² J Fuglestedt, J Rogelj, RJ Millar, M Allen, O Boucher, M Cain, PM Forster, E Kriegler and D Shindell, 'Implications of possible interpretations of 'greenhouse gas balance' in the Paris Agreement' (2018), 376 *Philosophical Transactions of the Royal Society, A Mathematical Physical and Engineering Sciences* 1, p. 2

amounts of removals and corresponding lower reductions. It is, therefore, an ambiguous term, as it does not specify precise emission and removal targets. This ‘net’ approach was criticised by the Parliament with respect to the intermediate target for 2030,³³ for which it proposed a reduction instead of a net target.³⁴

The existence of a net-zero target comes from the recognition of the Commission that even though GHG emissions ‘should be avoided at source as a priority, removals of GHG will be needed to compensate for remaining GHG from sectors where decarbonisation is most challenging’.³⁵ As Geden and Schenuit remark, decarbonisation is not only challenging, but ‘impossible for some sectors, such as agriculture, the steel and cement industry, or aviation’.³⁶ The new target will, therefore, enhance the role of GHG removal options in the EU, which up to date have played only a minor part in the EU climate policy debate.³⁷

According to the Proposal, these removals are to be done ‘by natural or other sinks in the Union’,³⁸ which is, through ‘natural and technological solutions’.³⁹ However, the Commission does not specify what is to be understood by the term ‘sinks’, reason why the EP asks for more clarification.⁴⁰ The latter also refers to the important role of natural carbon sinks in the transition to a climate-neutral society.⁴¹ The Council here takes a step further and defines what is to be understood by sinks in its amendment to Recital 12 of the Proposal:

Sinks include natural and technological solutions as reported in its greenhouse gas inventories to the UNFCCC. [...] Solutions that are based on carbon capture

³³ Which was set by the Commission Proposal as a ‘reduction of net greenhouse gas emissions by at least 55%’ (Article 2(a) of the Proposal)

³⁴ European Parliament’s amendments to the Proposal (op. cit), Article 2(a): ‘The Union’s 2030 target for climate shall be an emissions reduction of 60 % compared to 1990’

³⁵ Explanatory Memorandum of the Proposal for a European Climate Law, p. 7

³⁶ Oliver Geden and Felix Schenuit, ‘Unconventional mitigation: carbon dioxide removal as a new approach in EU climate policy’ (2020) SWP Research Paper 8/2020, p. 30

³⁷ Ibid, p. 5

³⁸ Article 1 Proposal for a European Climate Law

³⁹ Recital 12 Proposal for a European Climate Law. For a brief explanation on the difference between natural and technological solutions, see Grego Erbach and Gema Andreo Victoria, ‘Carbon dioxide removal: Nature-based and technological solutions’ (Briefing, European Parliamentary Research Service, 2021)

⁴⁰ European Parliament’s amendments to the proposal for a European Climate Law (op. cit.), Recital 12(e) ‘In order to provide more clarity, a definition of natural and other carbon sinks should be presented by the Commission’.

⁴¹ European Parliament’s amendments to the proposal for a European Climate Law (op. cit), Recital 12(c)

and storage (CCS) and carbon capture and use (CCU) technologies may play a role for decarbonization, especially for the mitigation of process emissions in industry, for the Member States that choose this technology.

It is noteworthy that the Council is the only institution that refers expressly to specific technological solutions for GHG removals.

Moreover, the net-zero target proposed by the Commission is ‘economy-wide’,⁴² which means, all sectors of the economy will have to contribute to its achievement. Finally, it is to be noted that this balance is to be achieved ‘domestically within the Union’,⁴³ which precludes, in principle, international offsetting.⁴⁴ The updated Nationally Determined Contribution of the EU to the Paris Agreement sets the 2030 target in line with this domestic approach, specifying that ‘the 2030 target is to be achieved through domestic measures only, without contribution from international credits’.⁴⁵

This is, in a nutshell, the meaning of climate neutrality as proposed by the Commission and developed by the co-legislators. The final text of the ECL contains a definition of climate neutrality in very similar terms as the one in the Proposal, which reflects the abovementioned agreement between the EU actors in enshrining climate neutrality in legally binding terms.⁴⁶

2.2. Institutional disagreement: Climate Neutrality at Union or Member State level

As has been observed, political will existed to enshrine climate neutrality in legally binding terms through the adoption of the European Climate Law. The problem arose, and the political consensus was blurred, when it came to how to achieve the net-zero target, how to steer towards a climate neutral Union. The points of contention between the Commission Proposal on the one hand, and the Council and especially the Parliament

⁴² Recital 12 Proposal for a European Climate Law

⁴³ Ibid

⁴⁴ Niels Meyer-Ohlendorf, ‘A European Climate Law, Analysis of the European Commission Proposal’ (Ecologic Institute, 2020), p 7

⁴⁵ Update of the National Determined Contribution of the European Union and its Member States, 17 December 2020, available at <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Spain%20First/EU_NDC_Submission_December%202020.pdf>, p. 8

⁴⁶ See Section 4.1. for an explanation of the European Climate Law

position, on the other hand, were numerous. The focus of this section (and thesis) will lay on one specific source of discussion: the consecution of a climate neutral Union or a group of climate neutral countries, and the reasons why there is a diverging view.

2.2.1. A Climate Neutral Union

On the one side of the coin, the Commission refers in the Proposal to the achievement of climate neutrality in the *Union as a whole*, which is, ‘by all Member States collectively’.⁴⁷ It introduces, therefore, a Union-wide target of climate neutrality, which is repeated throughout the document. This Union-wide climate neutrality target is not, however, explained by the Commission. Instead, it refers to this target using diverse terminology, with concepts such as ‘Union-wide climate neutrality objective’,⁴⁸ ‘Union-wide emissions and removals’,⁴⁹ or just as ‘EU climate neutrality’,⁵⁰ but without delving in its implications.⁵¹ This means, in essence, that not all countries are bound to achieve climate neutrality in their territory, as long as climate neutrality is achieved in the Union as a whole. *A fortiori*, one Member State could have positive net emissions in 2050 as long as other countries compensate by having negative emissions.⁵² However, this does not entail that they do not have to make any efforts. As Article 2(1) of the Proposal confirms, both ‘the EU institutions and the Member States have to take the necessary measures to enable the collective achievement of this target’. But what are the reasons behind the choice for a collective target?

⁴⁷ Recital 12 Proposal for a European Climate Law

⁴⁸ *Ibid*

⁴⁹ Article 2(1) Proposal for a European Climate Law

⁵⁰ Explanatory Memorandum of the Proposal for a European Climate Law, p 2

⁵¹ Conclusion reached after analysing the Explanatory Memorandum of the Proposal and the Proposal itself, including the Legislative Financial Statement

⁵² The term ‘negative emissions’ means that the removal of emissions (in another territory) is higher than the domestic reductions. For more information on the meaning of negative emissions, and the means to achieve it (approaches and technologies), see Gregor Erbach, ‘Negative greenhouse gas emissions: assessment of feasibility, potential effectiveness, costs and risks’ (Briefing, European Parliamentary Research Service, 2015), written in the context of the negotiations of the Paris Agreement.

i. Analysis of the preparatory documents to the Proposal: Impact Assessments

As for the Commission, the analysis of the need for EU action and the potential implications of alternative policy options of a proposal is made in impact assessments.⁵³ For the Proposal for a European Climate Law, there is no specific impact assessment conducted. Instead, the impact assessment used is the in-depth analysis accompanying the communication ‘A Clean Planet for All’ from 2018,⁵⁴ which explores a range of GHG emission reduction scenarios, starting at -80% going up to net zero by 2050.⁵⁵ The scenarios are focused on different removal and reduction targets and the contribution of different sectors to their achievement. However, this analysis does not contain an assessment on the benefits of a Union-wide target in comparison with national-wide ones.⁵⁶ This last one was, therefore, not even an option considered by the Commission at that time. This is logical given that the goal of the impact assessment was to frame the direction of the long-term strategy of the EU in view of the Paris Agreement, which highlights the importance of a global response to climate change.⁵⁷ Moreover, as the EU is a collective actor to the Paris Agreement – meaning that the Nationally Determined Contribution submitted by the EU is the one applying in general for the EU and for the Member States –,⁵⁸ the impact assessment was directed, accordingly, towards the analysis of collective EU action.

⁵³ See in this regard, about the importance of the Commission’s Impact Assessments in the legislative process, Stephen White, ‘Impact Assessment – Experience from the European Commission’ in: Kilian Bizer, Sebastian Lechner and Martin Führ (eds), *The European Impact Assessment and the Environment*, (Springer, 2010). See also ‘Impact Assessments’ (Website European Commission), available at <https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en>, accessed 12 March 2021

⁵⁴ Commission, ‘In depth analysis in support of the Commission Communication COM(2018) 773, a Clean Planet for All’ (2018) Available at

<https://ec.europa.eu/clima/sites/default/files/docs/pages/com_2018_733_analysis_in_support_en_0.pdf>

⁵⁵ This is not the first time that the Commission does not conduct an impact assessment for a specific proposal but refers to one conducted in the past instead. Another example is the Proposal for a European Single Sky from 2020 (COM/2020/577 final), that refers to an impact assessment carried out in 2013.

⁵⁶ To reach this conclusion, the in-depth analysis abovementioned has been thoroughly examined, which contains a wide array of options for the long-term strategy of the EU in view of the Paris Agreement. Based on a ‘comprehensive literature review’ (p. 53), it presents a combination of policy scenarios to achieve different GHG emission reduction targets, which vary from a reduction of 80% of GHGs (excluding sinks) to the achievement of net-zero emissions by 2050. All these policy scenarios examine action in the EU *as a whole*, but none of them present an analysis of Member State action alone. Even though it emphasizes the ‘crucial role’ that National Governments play in the low carbon and energy transition (Section 6.1 of the in-depth analysis), none of the policy scenarios consider Member State action alone. Instead, this ‘crucial role’ of Member States is directed towards the implementation of the *EU acquis*, which is, the correct implementation of (future) EU climate legislation and the Governance Regulation.

⁵⁷ Article 2(1) Paris Agreement

⁵⁸ Which is possible under Article 4(16) Paris Agreement.

More recently, nonetheless, the Commission presented the Impact Assessment ‘Stepping up Europe’s 2030 ambition’⁵⁹ with the goal to determine how, and to what extent, raise the 2030 GHG emissions reduction target to make it consistent with the new climate neutrality target of 2050, from an original reduction target of 40% (absolute) to 50% to 55% (net) by 2030 compared to 1990. Once again, this Impact Assessment refers to EU-wide targets, not to targets at Member State level. It analyses the impact of different targets and policy scenarios at EU level, without making any reference as to why an EU-wide target is the preferred option. In fact, the main results are aggregated for the EU-27, with no Member State specification.⁶⁰ This makes clear, once again, that the Commission prioritises collective effort at EU level, but it does not offer an explanation to the reasons for this choice.

ii. The Proposal and the actors’ position on the Proposal

Given that these impact assessments do not offer clarity on the reasons for the choice of a Union-wide climate neutrality target and remain silent about the possibility of Member State individual targets, an examination of the wording of the Proposal is conducted to extract the grounds for the defence of the collective target. First, the Commission stresses that climate change is a ‘trans-boundary challenge that cannot be solved by national action alone’,⁶¹ and states that collective action is needed as ‘coordinated EU action can effectively supplement and reinforce national and local action and enhances climate action’.⁶² In sum, a collective challenge as climate change, needs a collective response, which in this case is translated into the collective target of climate neutrality. Second, according to the Commission, ‘action at EU level should aim to provide for cost effective delivery of long-term climate objectives’.⁶³ The goal to use cost effective options to achieve climate neutrality is further repeated through the Proposal,⁶⁴ and although not expressly phrased as a reason *per se*, it represents a ground for the choice of a collective target.

⁵⁹ Commission, ‘Impact assessment accompanying the communication Stepping up Europe’s 2030 climate ambition, Investing in a climate-neutral future for the benefit of our people’ SWD (2020) 176 final

⁶⁰ Ibid, Table 28: Overview of key modelling results, pp. 129-130

⁶¹ Explanatory Memorandum of the Proposal for a European Climate Law, p 4

⁶² Ibid

⁶³ Ibid

⁶⁴ Recitals 3 and 15, and Article 3(3) and Article 3(3) Proposal for a European Climate Law

As for the Council, an analysis of its amendments shows that this institution shares with the Commission the view that climate neutrality is to be achieved at Union level.⁶⁵ The co-legislator does not change the wording of the proposed Union-wide target in Article 2 of the Proposal nor clarifies why it is following the Commission's view on climate neutrality.⁶⁶ Nonetheless, it emphasizes in its amendments the role of cost-effectiveness, remarking that Member States shall, for achieving the collective climate neutrality target, 'take into account the importance of promoting cost-effectiveness'.⁶⁷ However, it is to be noted that five countries, namely Sweden, Luxembourg, Denmark, Spain and Austria advocated in the beginning the establishment of national wide targets.⁶⁸ In the end, they supported the Council's general approach, but underlined the 'importance of each Member State reaching climate neutrality at the national level by 2050 in order to achieve a climate-neutral EU by that date'.^{69,70}

⁶⁵ To reach this conclusion an examination has been conducted of both the Council's amendments of the Proposal for a European Climate Law and all the documents available in the Council's Register regarding the interinstitutional file of the Proposal, 2020/0036(COD) until the end of April. The latter include preparation for meetings of the Council, outcome of proceedings, notes and side notes. For an overview of these documents, see <https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=&WordsInText=&DocumentNumber=&InterinstitutionalFiles=2020%2F0036%28COD%29&DocumentDateFrom=&DocumentDateTo=&MeetingDateFrom=&MeetingDateTo=&DocumentLanguage=EN&OrderBy=DOCUMENT_DATE+DESC&ctl00%24ctl00%24cpMain%24cpMain%24btnSubmit=>>

⁶⁶ This could have been done by means of the inclusion of an introduction to the General Approach of the Council to the Proposal for a European Climate Law.

⁶⁷ Council's amendments to the Proposal for a European Climate Law (op. cit.), Article 2

⁶⁸ Note from the General Secretariat of the Council to the Council, regarding the Partial General Approach of the Council in the context of the Proposal for a European Climate Law, 19 October 2020, document number 12083/20, point 11 available at <<https://data.consilium.europa.eu/doc/document/ST-12083-2020-INIT/en/pdf>>

⁶⁹ Statement by Sweden, Luxembourg, Denmark, Spain and Austria regarding the partial general approach agreed by the Council on 23 October 2020 on the Proposal for a European Climate Law, p. 4 available at <<https://data.consilium.europa.eu/doc/document/ST-12261-2020-ADD-1/en/pdf>>.

⁷⁰ It is noteworthy that all these countries have committed legally or politically to reach the climate neutrality target within their territories by 2050 or before. For Sweden, see the Swedish Climate Policy Framework, available at <<https://www.government.se/495f60/contentassets/883ae8e123bc4e42aa8d59296ebe0478/the-swedish-climate-policy-framework.pdf>>; for Luxembourg, see the Climate Roadmap, entitled "Climate generation - ambitious - innovate - socially just", available at <<https://environnement.public.lu/content/dam/environnement/actualites/2019/12/20191206-PNEC.pdf>> (no translation available); for Denmark, see the Climate Act, available at <<https://environnement.public.lu/content/dam/environnement/actualites/2019/12/20191206-PNEC.pdf>> (unofficial translation from the Danish Ministry of Climate, Energy and Utilities); for Spain, see the Climate Change and Energy Transition Act, available at <https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-8447> (no official translation available); for Austria, there is a political commitment from the government to achieve climate neutrality by 2040, see, in this regard, the International Energy Agency, 'Energy Policy Review – Austria 2020', p.2, available at <https://iea.blob.core.windows.net/assets/ea419c67-4847-4a22-905a-d3ef66b848ba/Austria_2020_Energy_Policy_Review.pdf>

All in all, the closest to a debate about why a Union-wide target is preferable on this side of the coin goes hand in hand with the Opinion of the EESC, which openly supports ‘the approach of a transition to climate neutrality at EU level overall instead of in every Member State individually’.⁷¹ The main reason is that this approach has the ‘advantage that an optimal distribution of efforts can be accomplished EU-wide, taking into account relevant differences among Member States’.⁷² In this sense, it points at the use of offset and compensation schemes between Member States, which means allowing Member States to trade with their GHG emissions under certain circumstances.⁷³ The EESC therefore shares the concern for a target that allows for cost-effective alternatives, which, in its view, is ensured through the establishment of compensation schemes and offsetting options between Member States. Another reason for the EESC to choose a collective target is the consideration that, ‘over time, more sectors will fall into the framework of emissions trading’.⁷⁴ The EU Emission Trading System (ETS) is a ‘cap and trade’ system, based on an EU-wide cap determining the maximum amount of emissions allowed, and the possibility of installations to trade with emission allowances around the EU, Iceland, Liechtenstein and Norway.⁷⁵ This EU-wide cap is to be reduced over time so that the total emissions in the EU territory for the sectors covered fall, the ultimate goal being to reduce the cap to zero emissions.⁷⁶ Climate neutrality at EU level seeks a similar objective but with an economy-wide perspective: that of achieving net zero emissions in the EU, in this case by reducing emissions and strengthening removal mechanisms. Therefore, in this line, if more sectors would fall under the EU ETS, with its EU-wide cap, then a Union-level approach to climate neutrality would fit better than a Member State approach.

⁷¹ Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] NAT/784, recommendation 1.2

⁷² Ibid

⁷³ The specific circumstances to fulfil for accessing this possibility are laid down in climate legislation, mainly the EU Emission Trading Scheme, the Effort Sharing Regulation and the LULUCF Regulation.

⁷⁴ Opinion of the EESC (op. cit.), recommendation 4.5

⁷⁵ For an overview of the EU ETS, see See Stefan E Weishaar, ‘EU Emissions Trading – Its Regulatory Evolution and the Role of the Court’ in Marjan Peeters and Mariolina Antolino (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing, 2020) 443-458

⁷⁶ ‘EU Emissions Trading System’ (Website of the European Commission), accessed 20 March 2020, available at <https://ec.europa.eu/clima/policies/ets_en>

Finally, the EESC also stresses the fact that a Union-wide target entails a ‘continuation of the current approach of EU climate legislation’.⁷⁷ Moreover, when asked about it, the rapporteur of this Opinion, Jan Dirx, raises an important political point: ‘it would be easier for a number of countries to accept the net-zero target by 2050 if it were to apply to the EU as a whole than if it were to apply to each Member State individually’.⁷⁸

In closing, several factors play a role on the choice for a climate neutral Union: first, the desirability for cost-effective options at EU level; second, the recognition that climate change is a transboundary challenge and therefore requires transboundary solutions; third, the political acceptability of the Proposal within the Member States; fourth, the ‘continuity approach’ with respect to previous climate legislation, especially the EU ETS, characterised for having a similar concept than the one of climate neutrality; and fifth, the suitability of the approach with the commitment of the EU to become climate neutral under the Paris Agreement, given the role of the EU as a collective actor.

2.2.2. A group of Climate Neutral countries

On the other side of the coin, the European Parliament considers in its position on first reading that climate neutrality is to be achieved in ‘the Union *and the Member States*’.⁷⁹ Accordingly, it amends Article 2 of the Proposal by adding that ‘each Member State shall achieve net zero greenhouse gas emissions by 2050 at the latest’.⁸⁰ All the amendments follow this formula of including an obligation to the Member States to reach climate neutrality individually besides the obligation at EU level. This means, in essence, that Member States would be legally bound to achieve climate neutrality within their territory, which precludes the possibility to rely on other countries’ better performance.

Therefore, while for the Commission ‘the order of factors does not change the product’, for the EP this mathematical commutative rule does not apply to climate neutrality in the EU. Given this different approach, one may wonder: on what has the European Parliament

⁷⁷ Opinion of the EESC (op. cit.), recommendation 4.4

⁷⁸ E-mail from Jan Dirx, rapporteur of the EESC Opinion on the Proposal for a European Climate Law, to author, on the grounds for the choice of a Union-wide climate neutrality target for 2050 (9 February 2021)

⁷⁹ European Parliament’s amendments to the European Climate Law (op. cit.), Recital 12

⁸⁰ Ibid, Article 2

base its position? Why is it preferable to include national targets and not rely, instead, on a collective one exclusively?

Regrettably, as with the Commission and the Council, the Parliament does not offer much information about the reasons for its choice either. After an examination of the documents prior to and accompanying its amendments,⁸¹ only one paragraph that relates to the grounds for this choice was found, located in the draft report of the Parliament's rapporteur, Jytte Guteland.⁸² According to it, choosing national-binding targets is a 'matter of justice' and a way for all Member State to 'gain from the transition to climate neutrality'. Moreover, it would 'ensure that Member States uphold their commitments under the Paris Agreement'. This last argument is, in our view, surprising, given that it is the EU, on account of all the Member States, that submits the joint Nationally Determined Contribution under the Paris Agreement – and not the individual Member States.⁸³

Given this rather short justification, the rapporteurs and shadow rapporteurs were contacted with the aim of obtaining a more detailed explanation on this divergence from the Proposal. We received one answer from a shadow rapporteur, Michael Bloss. He builds upon Jytte's argumentation by clarifying that national binding targets are 'a key tool to ensure accountability and contribution for each member state'.⁸⁴ In their view, 'in the end, the Member States are responsible to set and implement their national policies

⁸¹ The documents analysed include Amendments of the European Parliament to the Proposal for a European Climate Law, the initial report of Jytte Guteland and minutes from the ENVI Committee meetings related to the European Climate Law. Furthermore, we asked the rapporteurs and shadow rapporteurs via e-mail about the existence of documentary evidence on the convenience of national-binding targets, yet the answer was on the negative.

⁸² Jytte Guteland, 'Draft report on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)' (COM(2020)0080 – C9-0077/2020 – 2020/0036(COD)), p 38: 'In order to ensure that Member States uphold their commitments under the Paris Agreement, your Rapporteur proposes that all Member States shall ensure that they reach net zero emissions within their territory by 2050 at the latest. This is both a matter of justice, but it is also a way for all Member States to gain from the transition to climate neutrality. Postponing this transition would increase the risks of social and economic consequences, whereas swift action and binding national measures to reduce emissions in accordance with the climate neutrality objective will ensure better predictability and pave the way for new jobs and stronger economic growth. For reasons of solidarity, the Union should take into account that the starting points for achieving climate neutrality vary between Member States in the application of support mechanisms and funding such as the Just Transition Fund'

⁸³ UNFCCC, NDC registry, available at <<https://www4.unfccc.int/sites/ndcstaging/Pages/Party.aspx?party=EUU&prototype=1>>. See also Estelle Brosset and Sandrine Maljean-Dubois, 'The Paris Agreement, EU Climate Law and the Energy Union' in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar 2020), pp. 412-416

⁸⁴ Email from Michael Bloss, shadow rapporteur of the Parliament's amendments, to author, on the reasons for the choice of establishing individual national targets (28 January 2021)

and the EU has limited influence in many relevant areas, which is why having a binding target for all member states individually can prevent evasion of responsibility'.⁸⁵ In our view, this argument stands for the compliance issue – in the end, it is easier to make Member States accountable when the responsibility is individual instead of shared –⁸⁶ but not as regards the EU's influence on climate policy. The EU has an environmental competence shared with the Member States,⁸⁷ which it can exercise according to the ordinary legislative procedure to adopt new legislation in order to achieve environmental objectives.⁸⁸ In fact, the EU has been shaping internal climate legislation since the 1990s and adopted its first energy-climate package already in 2009, a package that has developed in size and importance ever since.⁸⁹ The areas where it has a more limited influence are listed in Article 192(2) TFEU, which includes the Member States' choice on energy sources and the general structure of their energy supply, but even then, it is possible to legislate by means of a special procedure in the Council.

All in all, the abovementioned justifications are wrapped up in Recital 18(a) of the Parliament's amendments, which indicates that 'reaching climate neutrality is only possible if all Member States share the burden and commit fully to transitioning to climate neutrality', and that 'each Member State has an obligation to meet the interim and end targets and if the Commission considers that these obligations have not been met, the Commission should be empowered to take measures against Member States'. Imposing national targets would make it easier for the Commission to assess to what extent a Member State is on track with the final goal, and therefore would empower it to bring actions before the CJEU against a Member State for failure to fulfil obligations. This hard law approach to compliance with the climate neutrality target stands in contrast to the soft law approach introduced by the Commission, a choice that embeds to a certain extent from the collective nature of the target.⁹⁰

⁸⁵ Ibid

⁸⁶ At least regarding identification of responsibilities, as setting nationally binding targets permits making every Member State accountable for their own emissions.

⁸⁷ Article 4(2) TFEU

⁸⁸ Article 192(1) TFEU. The environmental objectives are listed in Article 191 TFEU.

⁸⁹ Elisa Morgera, 'Environmental Law', in: Catherine Barnard and Steve Peers (eds), *European Union Law* (Second Edition, Oxford University Press, 2018), pp. 679-684

⁹⁰ See Section 4.1 on the adoption of the European Climate Law for an explanation of the soft law approach to compliance chosen by the Commission.

Therefore, in essence, the focus of the EP appears to be on the idea of a European Union growing at the same pace – as this would ensure that all Member States gain from the transition to climate neutrality –; on the suitability with the Paris Agreement, given the Member States’ commitment under this international agreement;⁹¹ and most importantly, on compliance, as having national binding targets could prevent evasion of responsibility, given that it is easier to enforce them than a collective one. National climate neutrality targets were, for the EP, the only means to successfully achieve climate neutrality.

2.3. Concluding remarks

After an examination of the institutions’ positions on the form of the climate neutrality target – collective or national-wide –, it is noteworthy the lack of underlying argumentation and research from both sides. There are no documents, at least available to the public, on which the European Commission, the Council nor the EP have based their position on. The implications deriving from this are, nonetheless, different.

On the one hand, the choice for a Union-wide target is somehow logical for the following two reasons. First, it is a continuation of the current climate regulatory framework, which places efforts at Union level as a priority by creating an EU wide-cap in the case of the EU ETS scheme, or by allowing for flexibilities in those sectors which contain national binding targets – which is the case for the Effort Sharing Regulation and the LULUCF Regulation. Second, the EU acts as a collective actor for the objectives pursued in the Paris Agreement, which means that the Nationally Determined Contribution submitted by the EU is the one applying in general for the EU and the Member States. Therefore, the continuation approach taken by the Commission and the Council justifies, to some extent, this lack of explanation.

On the other hand, as for the Parliament, the lack of documentary evidence or a more detailed explanation of its preferred model – national-wide targets – is more notorious given the novelty of this exclusively national approach. The establishment of national climate neutrality targets is not possible without a comprehensive review of climate legislation on the same line. The role of national-binding instruments, such as the Effort

⁹¹ The Paris Agreement is a mixed agreement, with both the EU and the Member States being contracting parties.

Sharing Regulation, should then be emphasized, in detriment of EU-wide ones such as the EU ETS.⁹² The EP, however, does not address in its amendments the impact of national-wide targets on EU climate legislation, and neither is clear with regards to the exclusion of flexibilities and offsetting mechanisms – it does not mention them in the amendments.

Therefore, since the arguments are not comprehensively put forward, and the consequences not sufficiently examined, it is difficult to compare both situations and to assess which one would be preferable towards the achievement of a climate neutral EU. On top of that, given the novelty of the concept of climate neutrality in the EU in general, there is very few legal literature – if any – on the possibility and implications of a Union-wide versus national-wide targets.⁹³ As a result, from an EU law perspective, several questions stand out in this regard: How do these approaches fit with the principle of conferral as laid down in the Treaties? What role does Article 193 TFEU play in this regard? This leads us to the second sub-research question, which will be addressed in the next section: to what extent are the two forms of the climate neutrality target, as presented by the EU institutions, compatible with EU primary law?

3. COMPATIBILITY OF THE EU INSTITUTIONS' POSITION WITH PRIMARY LAW

The aim of this section is to assess the compatibility of the two forms of the climate neutrality target, as presented by the EU institutions, with EU primary law. Accordingly, this section discusses the position of Member State and Union-wide climate neutrality in view of the principle of conferral of powers (3.1) and the environmental guarantee of

⁹² We should note, in this point, that the EU ETS covers around 40% of the EU's GHG emissions. See 'EU Emissions Trading System' (Website of the European Commission), accessed 20 March 2020, available at <https://ec.europa.eu/clima/policies/ets_en>

⁹³ The following journals have been consulted, searching for articles whose titles would contain the keywords 'climate neutrality' or 'European Climate Law': Journals of Climate Law, Environmental Law and Management, Environmental Law and Practice Review, Environmental Law Institute Guidance and Policy Documents, Environmental Law Journal, Environmental Law Newsletter, Environmental Law Reporter Administrative Materials, Environmental Law Reporter, Environmental Law Review, Environmental Law, Environmental Policy & Planning, European Environmental and Planning Law; Review of European, Comparative & International Environmental Law, and Transnational Environmental Law. Moreover, a more general search has been performed on the database of the Library of Maastricht University for articles containing the abovementioned keywords [as of end of May 2021]

Article 193 TFEU (3.2), with a view of giving an answer to the second sub-research question.

3.1. The problem of competences: is Article 192(1) TFEU the appropriate choice of legal basis?

Action on climate change, as part of environmental policy, is a competence area shared by the EU and the Member States.⁹⁴ The extent to which the EU is able to legislate is governed by the principles of conferral, subsidiarity and proportionality.⁹⁵ In accordance with the principle of conferral, the EU may not legislate if the Treaties do not provide a legal basis—thus a legal provision that attributes competence to the EU legislator.⁹⁶ The specific legal bases for EU action on the environment are enshrined in Article 192 TFEU, which provides for two different decision-making procedures depending on the EU's role in relation with Member State competences.

The Commission Proposal is based on Article 192(1) TFEU, for which the Council and the EP act as co-legislators in the ordinary legislative procedure. Nonetheless, the content of the Proposal casts some doubts as to whether this is the correct choice of legal basis, which may bring a problem of competences. As Krämer stresses, 'it is doubtful, whether Article 192(1) TFEU is the appropriate legal basis'.⁹⁷ According to him, the 'considerable effect which the change from fossil fuels to renewable sources of energy will have on the national economies' means that the Proposal would be 'better based on 192(2) TFEU'.⁹⁸ Indeed, Article 192(2) TFEU is the appropriate legal basis when 'measures significantly affect a Member State's choice between different energy sources and the general structure of its energy supply', and provides for a special legislative procedure with the Council acting unanimously. Such concern is also raised by Poland in the parliamentary scrutiny

⁹⁴ Article 4(2)(e) TFEU

⁹⁵ Article 5 TEU

⁹⁶ Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases, and Materials* (Sixth edition, Oxford University Press, 2015) p 76

⁹⁷ Ludwig Krämer, 'Planning for Climate and the Environment: the EU Green Deal', *Journal for European environmental & planning law* 17 (2020), p. 270

⁹⁸ *Ibid*, p. 271

of the Proposal.⁹⁹ While it confirms that the proposal is limited to climate change and therefore in line with the objectives indicated in Article 191 TFEU, it recommends the use of Article 192(2) given the ‘significant impact’ on their choice of energy sources,¹⁰⁰ as the switch to renewable energy will play a major role in the transition towards climate neutrality.¹⁰¹

Moreover, one could argue that the Proposal also affects town and country planning and land use, another threshold for the use of 192(2) TFEU. The net-zero target introduces a ‘no-debit’ rule, meaning that GHG emissions should be compensated with GHG removals. Natural sinks, such as forests or wetlands, will play a major role in this framework due to their power to absorb GHG emissions.¹⁰² This means, to a certain extent, that Member States will have to further strengthen these sinks, which could indeed touch upon the Member States’ competences on country planning and land use. This is a source of concern for the Dutch Senate, which states in its reasoned opinion to the Proposal that the legal basis does not match with the ‘proposal’s substantive importance and scope’,¹⁰³ as ‘it may well be necessary to take measures affecting spatial planning’¹⁰⁴ to achieve the climate neutrality target.

This problem of competences multiplies when taking into consideration a nation-wide target approach. Making climate neutrality binding for each Member State individually would imply, as mentioned already, the progressive elimination of flexibilities in climate legislation. Every single Member State would have to reduce GHG emissions and

⁹⁹ Opinion of Foreign and European Union Affairs Committee of the Senate of the Republic of Poland on the proposal for a regulation of the European Parliament and of the Council establishing a framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) COM(2020)80 adopted at the sitting on 2 June 2020, available at <<https://secure.ipex.eu/IPEXL-WEB/scrutiny/COD20200036/plsen.do>>

¹⁰⁰ Ibid, p.1

¹⁰¹ Recital 6 Proposal for a European Climate Law. See also in this regard, Commission, ‘A Clean Planet for all: A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy’ COM (2018) 773 final, p. 4

¹⁰² The European Parliament calls on the strengthening of natural sinks in its amendments to the Proposal for a European Climate Law, Recital 12(c). For more information on the role on natural sinks in the removal of GHGs, see Grego Erbach and Gema Andreo Victoria, ‘Carbon dioxide removal: Nature-based and technological solutions’ (Briefing, European Parliamentary Research Service, 2021), pp. 1-5

¹⁰³ Reasoned opinion (subsidiarity principle) of the Dutch Senate on the EU proposal for a regulation establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (COM(2020)80– C9-0077/2020 – 2020/0036(COD)), courtesy translation. Available at

<[https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2020/0080/NL_SENATE_AVIS-COM\(2020\)0080_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2020/0080/NL_SENATE_AVIS-COM(2020)0080_EN.pdf)>, p. 3

¹⁰⁴ Ibid

enhance removals to achieve net-zero emissions by 2050, notwithstanding the starting point of every Member State, which is substantially different from one country to another. By taking a look at the targets of the Effort Sharing Regulation it is possible to have a glimpse of to what extent a country is ‘able’ to contribute to emission reduction as of 2030, with Sweden having to reduce its GHG emissions in 40% in relation to their 2005 levels while Bulgaria being allowed to emit as much as in 2005.¹⁰⁵ Therefore, some Member States would have to undergo major reforms in their territories to meet the target, which would most likely touch upon 192(2) TFEU competences. Given that national climate neutrality is more intrusive in Member States competences than an EU-wide target, it seems problematic that the Member States, either represented in the Council or via their national parliaments’ scrutiny, would agree to such an approach to take place according to 192(1) TFEU. Since it was the EP that defended this more intrusive approach, the paradox arose that this defence would end up in the use of 192(2) TFEU, therefore placing the EP in a less powerful position – it would lose its position as co-legislator, and it would only be asked for its opinion instead.

In this discussion between 192(1) and (2) TFEU, the CJEU stands for the legislator’s discretion and a strict interpretation of the second paragraph.¹⁰⁶ The most recent example is the case *Poland v the European Parliament and the Council*,¹⁰⁷ in which Poland challenged the use of Article 192(1) TFEU as a legal basis instead of 192(2)(c) TFEU in the establishment of the market stability reserve in the context of the EU ETS.¹⁰⁸ As a starting point, the Court emphasized that the choice of legal basis must rest on ‘objective factors amenable to judicial review’, which include ‘the aim and the content’ of the measure.¹⁰⁹ It considered that the effects of an EU measure on a Member State’s energy policy are of a ‘speculative nature’, as they are based on assumptions as to the likely

¹⁰⁵ Annex I Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013. It should be noted that these targets will be amended during 2021 as part of the ‘Fit for 55 package’, which aims at amending existing climate legislation to make it compatible with the new 55% target.

¹⁰⁶ Helle Tegner Anker, ‘Competences for EU Environmental Legislation: About Blurry Boundaries and Ample Opportunities’, in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar 2020), p. 17

¹⁰⁷ CJEU, Case C-5/16, *Poland v European Parliament and Council* [2018] ECLI:EU:C:2018:483

¹⁰⁸ Decision (EU) 2015/1814 of the European Parliament and the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC, [2015] OJ L264/1.

¹⁰⁹ Case C-5/16, paragraph 38

impact of that measure.¹¹⁰ Consequently, they are not amenable to judicial review, which entails that they should not be taken into account for the choice of legal basis. In this line, the Court concluded that recourse to Article 192(2)(c) TFEU is possible only ‘if it follows from the aim and content of that measure that the primary outcome sought by that measure is significantly to affect a Member State’s choice between different energy sources and the general structure of the energy supply of that Member State’.¹¹¹ This rejection of effects-based factors on the choice of environmental legal bases places the objective, and not the effects, of the specific measure, as the centre of gravity. This reasoning can be extended to the other grounds contemplated in Article 192(2) TFEU.

Extrapolating the case law of the Court to the Proposal, the focus should lie on its aim, which is to ‘establish the framework for achieving EU climate neutrality and providing the conditions to set out a trajectory leading the Union to climate neutrality by 2050’.¹¹² What the Proposal does it to enshrine a goal, an objective, into legally binding terms. It does not, however, specify which measures need to take place nor the efforts that the different countries ought to make. It does not touch upon the instruments to achieve climate neutrality, nor makes a reference to any of the grounds of Article 192(2) TFEU. Climate neutrality is a goal, but the path towards its achievement leaves a long list of unanswered questions which will only be resolved over time, via the adoption of specific climate legislation packages. Consequently, it can be defended that the Proposal has a correct legal basis as it is the effects, the path, but not the goal *per se*, that could contravene the principle of conferral. Following this, Article 192(2) TFEU should be rather used in the framework of the specific actions to be taken, which will be enshrined in the new ‘Fit for 55 Package’¹¹³ that aims to review numerous climate legislations to make them consistent with the more ambitious 2030 target. Therefore, it could be argued that it is here and not in the European Climate Law that Article 192(2) TFEU should play a role.

However, and despite the negative answer of the CJEU towards an effects-based approach in the choice of legal basis, it should be recalled that the mid-term targets are established

¹¹⁰ Ibid, paragraph 41

¹¹¹ Ibid, paragraph 46

¹¹² Explanatory Memorandum of the Proposal for a European Climate Law, p. 2

¹¹³ Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2021’, COM(2020) 690 final

with a view to achieving climate neutrality in 2050. The 2050 target represents the foundations of a building that will be constructed over time. In fact, the Commission amended the Proposal to include a more ambitious 2030 target: from a reduction target of 40% to a net reduction of at least 55%.¹¹⁴ What is more, in the Communication ‘Stepping up Europe’s 2030 climate ambition’¹¹⁵ the Commission presented an initial plan to achieve the 2030 target which already shows the impact that the climate neutrality target will have in all sectors of the economy. In the field of energy, it underlines the ‘energy’s central role in the transition to a climate neutral economy, which will need to be fully decarbonised’.¹¹⁶ Regarding land use, the Commission stresses ‘the need of a growing sink for the EU to achieve climate neutrality’,¹¹⁷ for which it will ‘put strong policies to protect and enhance the natural sink and resilience of the EU’s forests to climate change’,¹¹⁸ including, amongst others, ‘improved and enforced forest protection, sustainable re- and afforestation, and restoration of wetlands, peatlands, and degraded land’.¹¹⁹

Therefore, since achieving the goal entails the deployment of a wide array of tools that will certainly affect Member States’ choices of energy and country planning, shouldn’t the legal basis also recognise this? Wouldn’t it be politically desirable to reach a common understanding from the beginning? This common understanding could be, for example, to rely on the *pasarelle clause* established in the last paragraph of 192(2) TFEU, according to which the ‘Council [...] may make the ordinary legislative procedure applicable to the matters referred to in this paragraph’. This way, the principle of conferral would not be further debated, and it would show the compromise of the Regulation towards a common understanding, notwithstanding what events may occur in the future. Regrettably, the Commission nor the other legislative actors discuss the choice of legal basis further, nor offer reasons about this.

¹¹⁴ Commission, ‘Amended proposal for a Regulation of the European Parliament and of the Council on establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)’ COM(2020) 563 final, Article 2(a): ‘In order to reach the climate-neutrality objective set out in Article 2(1), the binding Union 2030 climate target shall be a reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55% compared to 1990 levels by 2030’.

¹¹⁵ Commission, ‘Stepping up Europe’s 2030 climate ambition: investing in a climate-neutral future for the benefit of our people’ COM(2020) 562 final

¹¹⁶ Ibid, p. 7

¹¹⁷ Ibid, p. 13

¹¹⁸ Ibid, p. 17

¹¹⁹ Ibid, p. 13

In conclusion, the choice of legal basis of the ECL is contentious, with arguments on both sides of the coin. What is clear, however, is that Article 192(1) TFEU suits best with an EU-wide climate neutrality approach than with a national-wide approach, as the latter results in a more intrusive approach in Member State's competences given the impact on their energy system and country planning, for which 192(2) TFEU seems more adequate. Therefore, the Parliament was, in our view, risking its position as co-legislator when defending the latter target. If we were to take the words of the Court, then a national-binding target would not be a problem. But this is not *res iudicata*, and the position of the Court could be different given the more widespread effects of climate neutrality compared to those of the market stability reserve.

3.2. The environmental guarantee in climate neutrality: is it possible to recourse to more stringent protective measures?

Article 193 TFEU, the 'environmental guarantee', allows Member States to maintain or take more stringent protective measures in the context of EU legislation based on Article 192 TFEU, given that they are compatible with the Treaties and prior notification to the Commission.¹²⁰ The Proposal does not prevent Member States to take more stringent measures, but it neither refers to this possibility, so more stringent action by Member States would, in principle, fall under Article 193 TFEU. More stringent measures on this matter could mean, for instance, Member States committing to achieve climate neutrality in their territories earlier than 2050 or setting specific emission reduction and removal targets leading to negative emissions at some point before 2050. These more stringent measures should be, according to the CJEU's interpretation, in accordance with the Treaties, particularly Articles 34 – 36 TFEU (about prohibition of quantitative restrictions

¹²⁰ For an overview on Article 193 TFEU, its use, and its interpretation by the CJEU, see Leonie Reins, 'Where Eagles Dare: How Much Further May EU Member States Go under Article 193 TFEU?' in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar, 2020). See also Lorenzo Squintani, Marijn Holwerda and Kars de Graaf, 'Regulating Greenhouse Gas Emissions from EU ETS Installations: What Room is Left for the Member States?' In: Marjan Peeters, Mark Stallworthy, and Javier de Cendra de Larragan (eds.) *Climate Law in EU Member States – Towards National Legislation for Climate Protection* (Edward Elgar, 2012)

between Member States);¹²¹ and must respect the nature of the harmonisation objective pursued through secondary legislation.¹²²

Therefore, in principle, Article 193 TFEU could be relied upon by the Member States in the context of the Proposal. However, differences arise regarding the two positions towards climate neutrality. In this sense, how can Article 193 TFEU be read in view of the different targets?

On the one hand, national-wide binding targets would allow for more stringent protective measures without further difficulties. In the end, every Member State would be responsible for its own emissions, meaning that, as long as they meet the net-zero target by 2050, they would be compliant with the Regulation (if it would include individual targets) – and the Treaties. Therefore, achieving the goal before, or imposing a more ambitious one, is something that would not affect, in principle, the machinery of the ECL nor the instruments towards the achievement of climate neutrality.

On the contrary, the same cannot be said with regards to an EU-wide approach. As it is stated in the Proposal, ‘action at EU level should aim to provide for cost effective delivery of long-term climate objectives’.¹²³ The problem is as follows: does this preclude Member States to take more stringent measures, if these would not be the most cost-effective options at EU level?¹²⁴ In theory, more stringent measures by Member States is desirable as it would show a clear compromise towards the achievement of the collective goal of climate neutrality on the one hand, and towards the Paris Agreement on the other,¹²⁵ being in line with the principle of ‘common but differentiated responsibilities’¹²⁶ and with the compromise of developed countries to ‘continue taking the lead in the fight against climate change’.¹²⁷ In practice, however, it could potentially undermine one of the aims of the Proposal, which is the use of cost-effective options.¹²⁸ In this line, the CJEU stated

¹²¹ See Leonie Reins (op. cit.), pp.10-11. The Court reached this conclusion in the case C-203/96, *Dusseldorp and Others* [1998] ECLI:EU:C:1998:316

¹²² Leonie Reins (op. cit.), pp.10-11

¹²³ Explanatory Memorandum of the Proposal for a European Climate Law, p. 4 (explanation of subsidiarity). Also, see Recitals 3 and 15, and Article 3 of the Proposal

¹²⁴ This concern is addressed by the EESC, see its Opinion on the Proposal for a European Climate Law (op.cit.), p 8

¹²⁵ Given that, even though the NDC is submitted by the EU on behalf of the Member States (joint NDC), the Member States are also party to the Paris Agreement (which has a mixed character, as both the Member States and the Union are party to it).

¹²⁶ Article 2(2) Paris Agreement

¹²⁷ Article 4(3) Paris Agreement

¹²⁸ See in this regard Section 2.2.1

in the case *Commission v France* that more stringent protective measures ‘must not frustrate the achievement of the objective pursued in the second instance’ by the legislative measure at hand.¹²⁹ However, to what extent cost-effectiveness is an objective pursued in the Proposal for a European Climate Law, or to what extent more stringent measures would undermine the use of cost-effective options, is unclear. Neither the Commission nor the Council have provided further guidance on this issue.¹³⁰

It should also be noted that, notwithstanding the back-and-forth of the application of Article 193 TFEU, various Member States have already approved climate laws to enshrine climate neutrality in 2050 or before,¹³¹ which shows a clear compromise towards the achievement of climate neutrality. They would fall under Article 193 TFEU as this provision also allows for maintaining existing legislation, but their content would have to be examined to assess their compatibility with the European Climate Law. Therefore, how to place these climate laws in the framework of the European Climate Law is, again, unclear, and will only be revealed over time.

In closing, it has been shown that the different approaches determine a different use of Article 193 TFEU, leaving more discretion to Member States in case of national-binding targets on the one hand, or opening a discussion on the connection between cost-effectiveness and climate neutrality on the other hand. Following this distinction on the two approaches to climate neutrality, the next section will analyse how the two forms of climate neutrality are to be understood in view of the agreement on the European Climate Law and in view of recent litigation and governance developments.

4. THE EUROPEAN CLIMATE LAW: *DE IURE* COLLECTIVE, *DE FACTO* NATIONAL, CLIMATE NEUTRALITY TARGET(S)?

The previous sections have analysed the Proposal for a European Climate Law and the co-legislators’ position on first reading with the goal to flesh out the reasons for the presentation of two different forms of climate neutrality – at Union or at Member State

¹²⁹ CJEU, Case C- 64/09, *Commission v France* [2010] ECR I- 3283, paragraph 35

¹³⁰ The EESC in its Opinion on the European Climate Law also stresses this, calling ‘on the European Commission and the Council to provide clarification and guidance on this matter as soon as possible’ (Recommendation 4.8). However, no clarification has been made in this regard to date.

¹³¹ For an overview of these national laws, see Matthias Duwe and Nick Evans, ‘Climate Laws in Europe: Good Practices in Net-Zero Management’ (Ecologic Institute, 2020)

level –, and to study their compatibility in light of EU primary law. In this section, the attention switches to the agreement on the European Climate Law,¹³² with the aim to answer the last sub-research question: what is and could be the position of the two forms of climate neutrality in light of the agreement on the European Climate Law and governance and litigation developments? To do so, the first sub-section (4.1) analyses how the climate neutrality target has been enshrined in the agreement on the European Climate Law, emphasising the choice for a collective target. The second sub-section (4.2) aims at exploring the position of the two forms of climate neutrality given recent developments in climate legislation and litigation in the national and European spheres, emphasising that the choice of the ECL for a collective approach does not entail that the discussion around climate neutrality at Member State level is over. In other words, this section addresses how the ECL creates a *de iure* collective, but Member States might potentially steer towards *de facto* national, climate neutrality target(s).

4.1. The European Climate Law and the choice for a collective climate neutrality target

One year and one month after the Commission presented the Proposal for a European Climate Law, the co-legislators' negotiators reached an agreement on 21st April 2021,¹³³ translating the political commitment of the European Green Deal into legally binding terms. Describing it as 'a landmark moment for the EU', the Executive Vice-President for the European Green Deal Frans Timmermans highlighted that the ECL will serve as a 'guide to the EU's policies for the next 30 years'.¹³⁴¹³⁵ Despite its broad scope, the legal basis of the European Climate Law has remained Article 192(1) TFEU.

The final text of the ECL contains a definition of climate neutrality in very similar terms as the one in the Proposal, reflecting the initial agreement between the different EU actors

¹³² Provisional agreement on the Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999, (European Climate Law), available at <<https://data.consilium.europa.eu/doc/document/ST-8440-2021-INIT/en/pdf>>.

¹³³ Provisional agreement on the Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999, (European Climate Law), available at <<https://data.consilium.europa.eu/doc/document/ST-8440-2021-INIT/en/pdf>>

¹³⁴ 'Commission welcomes provisional agreement on the European Climate Law' (Press corner European Commission website, 21 April 2021) available at <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1828>, accessed 2 May 2021

¹³⁵ However, it should be noted that in thirty years this legislation could be amended.

in enshrining climate neutrality for 2050 in legally binding terms. Only a few remarks are noteworthy about this final version.

First, the ambiguity of the *net* target has been tackled by means of limitations on the contribution of net removals to the intermediate target of 2030. Article 3(1) ECL in this regard establishes that the contribution of net removals to the 2030 target ‘shall be limited to 225 MtCO₂ Eq’. Moreover, the Commission will have to define an indicative Union’s greenhouse gas budget for the period 2030-2050 when making its proposal for the 2040 intermediate target, which is an indicative total volume of net greenhouse gas emissions that are expected to be emitted in that period.¹³⁶ Second, the concerns of the EP and the Council about the forms of removals¹³⁷ have been addressed in the joint text by the inclusion of the Council’s approach to technological solutions and by emphasizing the important role of natural solutions, in particular carbon sinks in the agriculture, forestry and land use sectors.¹³⁸

For the rest, the definition of climate neutrality remains the same as in the Proposal: an economy-wide,¹³⁹ net target that is to be achieved domestically¹⁴⁰ within the Union. Furthermore, and despite the initial position of the European Parliament to make climate neutrality binding in each Member State, the institutions finally reached the agreement to achieve climate neutrality in the Union *as a whole*, therefore setting a collective target. Accordingly, Article 2 ECL reads that ‘Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050’. In this line, the ECL presents itself as the ‘overall framework for the Union’s contribution to the Paris Agreement’,¹⁴¹ therefore emphasizing its role as an implementation of the latter and justifying collective action by the EU.

As examined in Section 2, the grounds for choosing an individual or a collective target remained unclear to a certain extent but opened a discussion on the role that both cost-

¹³⁶ Article 3(2)(b) and Recital 21 European Climate Law

¹³⁷ See Section 2.1

¹³⁸ Recitals 12 and 12(c) European Climate Law

¹³⁹ Recital 3(e) European Climate Law explicitly states that ‘all sectors of the economy - including energy, industry, transport, heating and cooling and buildings, agriculture, waste and land use, land-use change and forestry, and whether or not covered by the EU ETS - should play a role in contributing to the achievement of climate neutrality within the Union by 2050’

¹⁴⁰ Article 1 and Recital 12 European Climate Law

¹⁴¹ Recital 4 European Climate Law

effectiveness and compliance would play in the European Climate Law, discussion that has been addressed in the ECL to reflect the choice for the collective target.

On the one hand, the role of cost-effectiveness is sharpened in Article 2(2) ECL by including the Council's amendment that both the Union and the Member States have to take into account 'the importance of promoting [...] cost-effectiveness in achieving this objective'. In this sense, it is noteworthy that the ECL explicitly refers to the EU ETS, with its EU wide cap, as the 'cornerstone of the Union's climate policy' and its 'key tool for reducing emissions in a cost-effective way',¹⁴² therefore enhancing the role of the main market-based climate policy instrument. This stands in sharp contrast with the Member State target-oriented Effort Sharing Regulation, which is only mentioned in the ECL to clarify that it will be revised for the 2030 target,¹⁴³ making clear once again the preference towards a collective target compared to national-wide ones. Moreover, in this strive towards achieving climate neutrality in a cost-effective manner, it is significant that no reference is made to the use of flexibility mechanisms contained in the Effort Sharing and LULUCF Regulations, especially given that they are designed to 'enhance the cost-efficiency of mitigation efforts [...] and increase systemic flexibility'¹⁴⁴ and have played a significant role so far towards ensuring the cost-effectiveness of the collective EU effort.¹⁴⁵ Therefore, even though the ECL stresses the importance of cost-effectiveness, its content needs to be fleshed out by means of specific mechanisms in climate legislation, which is, at the time of the writing, being revised to adapt it to the new 2030 target.¹⁴⁶

On the other hand, the ECL introduces two different approaches to compliance, which are directly linked to the Governance Regulation¹⁴⁷ and which are based on monitoring

¹⁴² Recital 7(a) European Climate Law

¹⁴³ Recital 17 European Climate Law

¹⁴⁴ Seita Romppanen, 'The EU Effort Sharing and LULUCF Regulations: The Complementary yet Crucial Components of the EU's Climate Policy beyond 2030' in: Marjan Peeters and Mariolina Antolino (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing, 2020), p. 424

¹⁴⁵ For more information about the role and use of flexibility mechanisms under the ESR and the LULUCF Regulation, see Seita Romppanen (op. cit.) pp. 428-442; and Marjan Peeters and Natassa Athanasiadou, 'The continued effort sharing approach in EU climate law: Binding targets, challenging enforcement?' (2020) 29 *Review of European, Comparative and International Environmental Law* 201

¹⁴⁶ According to the 'Fit for 55' package published by the Commission (op. cit.), by July 2021, the Commission will review, and where necessary propose to revise, all relevant policy instruments to deliver the additional emissions reductions for 2030. See also 'European Climate Law' (Website of the European Commission), available at <https://ec.europa.eu/clima/policies/eu-climate-action/law_en>, accessed 15 May 2021

¹⁴⁷ Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action [2018] OJ L 328/1 (hereinafter, the 'Governance Regulation')

powers by the Commission. First, a hard(er) approach is used for the assessment of Union measures and the collective progress made by all Member States towards the achievement of climate neutrality. Accordingly, when these are inconsistent with the latter goal, the Commission ‘shall take the necessary measures in accordance with the Treaties’.¹⁴⁸ Therefore, the Commission has an obligation to take measures to ensure this consistency, even though it remains unclear how this collective progress will be assessed. Second, a soft approach to compliance has been chosen as regards the assessment of national measures. Accordingly, the Commission monitors and evaluates the consistency of national measures with the climate neutrality objective on the basis of information submitted and reported under the Governance Regulation.¹⁴⁹ When these are not consistent with the collective progress towards climate neutrality, the Commission may issue recommendations to the Member States, which have to notify how they ‘intend to take due account’ of the recommendations or state reasons if they decide not to address them (either entirely or partially).¹⁵⁰ This ‘naming and shaming’ or ‘comply or explain’ strategy has been identified as a mechanism to harden soft governance approaches,¹⁵¹ but it remains to be seen whether this approach triggers a better compliance and sufficiently ambitious action by the Member States.¹⁵²

4.2. Discussion on the relevance of climate neutrality at Member State level in light of recent governance and litigation developments

As hinted in the introduction, the fact that the European Climate Law has opted for a collective target does not entail, however, that the debate between national and collective climate neutrality is, nor should be, over. The compliance mechanism chosen to enforce collective climate neutrality is that of soft law, based on non-binding recommendations by the Commission. However, this does not mean that there will not be other routes to

¹⁴⁸ Article 5 European Climate Law

¹⁴⁹ According to Article 6 European Climate Law, the Commission will assess National Energy and Climate Plans, the national long-term strategies and the Biennial Progress Reports submitted by the Member States in accordance with Regulation (EU) 2018/1999, as well as national climate change adaptation planning and strategies as established in article 4(2) European Climate Law

¹⁵⁰ Article 6(3) European Climate Law

¹⁵¹ Michèle Knodt and Jonas J. Schoenefeld, ‘Harder soft governance in European climate and energy policy: exploring a new trend in public policy’ (2020) 22(6) *Journal of Environmental Policy & Planning* 761, p. 765

¹⁵² Jonas J. Schoenefeld & Andrew J. Jordan, ‘Towards harder soft governance? Monitoring climate policy in the EU’ (2020) 22(6) *Journal of Environmental Policy & Planning*, 774, p. 783

achieve climate neutrality at the national level. On the contrary, the European Climate Law has the potential to create a level-playing field at EU level that could pave the way to the consecution of climate neutrality at Member State level. This sub-section examines recent developments in the national and European spheres that could contribute to steering the collective climate neutrality target into national ones.

4.2.1. The (increasing) role of national legislation and climate litigation

i. National legislation

At national level, there is a certain trend towards the enactment of framework climate laws enshrining the climate neutrality objective as of, or before, 2050;¹⁵³ which is mainly triggered by the Member States' commitments in the framework of the Paris Agreement.¹⁵⁴ As an example, both the German¹⁵⁵ and Spanish¹⁵⁶ Climate Acts expressly refer to the Paris Agreement as the basis of their commitments towards climate neutrality within their territory.¹⁵⁷ With the adoption of the European Climate Law, Member States will have another binding, more concrete, source of climate obligations. While in the Paris Agreement the contracting parties aim at achieving 'a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases *in the second half of this century*' for keeping the temperature rise 'well below 2°C';¹⁵⁸ the ECL is more specific in its aim by setting out the only 'binding objective of climate neutrality in the Union by

¹⁵³ For an overview of national climate laws as of 2020 that enshrine climate neutrality, see Matthias Duwe and Nick Evans (op. cit.), pp. 50-53

¹⁵⁴ Ibid, p. 8. Moreover, it should be recalled the nature of the Paris Agreement as a mixed agreement in the EU legal order, meaning that both the EU and the Member States are signatories and therefore bound by it.

¹⁵⁵ Gesetzesentwurf der Bundesregierung, Entwurf eines ersten Gesetzes zur Änderung des Bundes-Klimaschutzgesetzes (KSG), Bearbeitungsstand: 11.05.2021, 23:22 Uhr. It is to be noted that this climate act is under a review process given a recent judgement from the Federal Constitutional Court of Germany (see below)

¹⁵⁶ Ley 7/2021, de 20 de mayo, de cambio climático y transición energética (BOE num. 121, from 21/05/2021), available at < <https://www.boe.es/buscar/act.php?id=BOE-A-2021-8447>>

¹⁵⁷ In the case of Germany, according to Article §1 Climate Act, 'The basis is the commitment under the Paris Agreement based on the United Nations Framework Convention on Climate Change' [author's translation]. The original text is '[...] Grundlage bildet die Verpflichtung nach dem Übereinkommen von Paris aufgrund der Klimarahmenkonvention der Vereinten Nationen, wonach der Anstieg der globalen Durchschnittstemperatur auf deutlich unter 2 Grad Celsius und möglichst auf 1,5 Grad Celsius gegenüber dem vorindustriellen Niveau zu begrenzen ist [...]'. In the case of Spain, Article 1 Climate Act states that 'this law aims to ensure Spain's compliance with the objectives of the Paris Agreement' [author's translation]. The original text reads: 'Esta ley tiene por objeto asegurar el cumplimiento, por parte de España, de los objetivos del Acuerdo de París'.

¹⁵⁸ Articles 2(1)(a) and 4(1) Paris Agreement

2050'. This may steer legislative choices at national level towards the adoption of climate framework laws that include the objective of climate neutrality.

ii. National litigation

Furthermore, when national legislation falls short in their commitments, it exists the opportunity to rely on national courts to ensure that Member States comply with the existing provisions on climate legislation or follow sufficiently ambitious climate standards.¹⁵⁹ In this regard, there have already been some successful cases across the EU in which national legislatures have been brought before their national courts for failure to meet existing climate targets or to pursue more ambitious ones.

In the landmark *Urgenda* case of 2019 in the Netherlands,¹⁶⁰ the Dutch Supreme Court upheld the claim of the Urgenda Foundation against the Dutch State confirming earlier judgments¹⁶¹ and ordered the State to increase the GHG emissions reduction target of 2020 from 20% to 25% below 1990 levels.¹⁶² To achieve this conclusion, the Court took a human rights approach, declaring the violation of both articles 2 and 8 ECHR, namely, the rights to life and to private and family life.¹⁶³ It is noteworthy that obligations under EU law were not taken into special consideration given that the newly imposed target went further than the then existing obligations under EU law.¹⁶⁴

¹⁵⁹ See for an overview on climate litigation, Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.), *Climate Change Litigation: Global Perspectives* (Brill | Nijhoff, 2021)

¹⁶⁰ Supreme Court of the Netherlands, *The State of the Netherlands v Urgenda Foundation*, Case No 19/00135, 20 December 2019 (unofficial translation available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>>)

¹⁶¹ District Court of The Hague, *Urgenda Foundation v The State of the Netherlands*, Case No C/09/456689 /HA ZA 13-1396, 24 June 2015 (unofficial translation available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196>>) and Court of Appeal of The Hague, *The State of the Netherlands (Ministry of Infrastructure and the Environment) v Urgenda Foundation*, Case No C/09/456689 / ha za 13-1396, 9 October 2018 (unofficial translation available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610>>)

¹⁶² For a case note on the judgment, see Marjan Peeters, 'Case Note: Urgenda Foundation and 866 Individuals v The State of the Netherlands: The Dilemma of More Ambitious Greenhouse Gas Reduction Action by EU Member States' (2016) 25(1) *Review of European Community and International Environmental Law* 123. See also Christine Bakker, 'Climate Change Litigation in the Netherlands: The Urgenda Case and Beyond' in: Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.), *Climate Change Litigation: Global Perspectives* (Brill | Nijhoff, 2021)

¹⁶³ Supreme Court of the Netherlands, *Urgenda* case (op. cit.), paragraph 8.3.5. See also Therese Karlsson Niska, 'Climate Change Litigation and the European Court of Human Rights – A strategic next step?' (2020) 13 *Journal of World Energy Law and Business* 331

¹⁶⁴ At EU level, the target was that of 20% GHG emission reduction compared to 1990 levels. See '2020 climate & energy package' (Website of the European Commission), available at <https://ec.europa.eu/clima/policies/strategies/2020_en>, accessed on 30 May 2021

In France, two recent cases are worth mentioning.¹⁶⁵ First, the *Grande-Synthe* case¹⁶⁶ brought before the Conseil d'État (the highest administrative court in France) concerns the complaint by a French municipality against the national government for insufficient action on climate change. In November 2020, the Conseil d'État instructed the government to justify how it was taking adequate actions towards meeting its own climate goals, taking account of its domestic commitments especially in light of EU legislation.¹⁶⁷ In the second one, named *l'affaire du siècle* ('the case of the century') and dated March 2021, the Administrative Court of Paris accepted the State's liability for ecological damage linked to climate change, and ordered the government to disclose the steps it was taking to meet its climate target (especially deriving from EU legislation) before taking a decision on the failure to meet climate goals.¹⁶⁸

More recently, in April 2021, the German Constitutional Court has decided what is, as far as is known to this author, the first judgment at EU level dealing with the concept of climate neutrality.¹⁶⁹ Here, one of the problems at stake was that the Federal Climate Change Act of 12 December 2019 governing national climate targets and the annual emission amounts allowed until 2030, described only in vague terms the actions to be taken after 2031 in contrast with the government's commitment to achieve climate neutrality by 2050.¹⁷⁰ The Court held that 'the statutory provisions on adjusting the reduction pathway for greenhouse gas emissions from 2031 onwards are not sufficient to ensure that the necessary transition to climate neutrality is achieved in time'.¹⁷¹ Given that these provisions narrow the options for reducing emissions after 2030, they

¹⁶⁵ See, in this regard, Marta Torre-Schaub, 'Climate Change Litigation in France: New Perspectives and Trends' in: Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.), *Climate Change Litigation: Global Perspectives* (Brill | Nijhoff, 2021)

¹⁶⁶ Conseil d'État (France), *Commune de Grande-Synthe v. France*, Conseil d'Etat (France), 19 November 2020, n° 427301

¹⁶⁷ Press release from the Conseil d'État, 'Greenhouse gas emissions: The Government must justify within 3 months that the reduction path to 2030 can be achieved' (19 November 2019), available at <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20201119_Not-Yet-Available_press-release.pdf>

¹⁶⁸ Administrative Court of Paris, *Notre Affaire à Tous and Others v. France* 4th Section, 3 February 2021, n° 1904967, 1904968, 1904972 et 1904976/4-1 (unofficial translation available at <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210203_NA_decision-1.pdf>)

¹⁶⁹ BVerfG Beschl. v. 24.05.2021 - 1 BvR 2665/18, Rn. - Klimaschutz. See, for an english translation, Press Release No. 31/2021 of 29 April 2021, 'Constitutional complaints against the Federal Climate Change Act partially successful', available at <<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>>

¹⁷⁰ Ibid, under 'Facts of the case'

¹⁷¹ Ibid, under 'Facts of the case'

‘practically jeopardise every type of freedom protected by fundamental rights’.¹⁷² Therefore, the Court declared them unconstitutional and ordered the legislator to specify in greater detail how the reduction targets for greenhouse gas emissions are to be adjusted for periods after 2030.¹⁷³

These developments in national procedures show the key role that national courts can play in shaping the climate action and ambition of national governments. Either through a human-rights approach as followed in the Netherlands or Germany, or through the failure to uphold domestic and international commitments as in France, the courts engage in the climate sphere by ordering national legislatures to follow or even improve climate standards, or by asking an explanation on how the existing targets will be achieved. In this regard, it is noteworthy, but not surprising, that in the abovementioned cases the national courts stress the importance of meeting the commitments under the Paris Agreement. Against this background, it is likely that the European Climate Law, in its role as implementation of the latter,¹⁷⁴ will enter the national courtrooms as a benchmark against to what assess the government’s (in)action in the climate field. Given that the main goal of the ECL is to achieve climate neutrality by 2050, individuals could rely on this instrument to ask for climate neutrality in national proceedings, therefore steering national governments towards enshrining climate neutrality at Member State level. This is, however, not devoid of problems, as it entails that courts would step in national parliaments’ tasks.¹⁷⁵ Moreover, it remains to be seen to what extent national courts will engage in this discourse.

iii. The European Court of Human Rights

As a final remark, the role of the European Court of Human Rights (ECtHR) should also be mentioned as an important actor to ensure that national governments follow sufficient

¹⁷² Ibid, paragraph III

¹⁷³ Ibid, paragraph III.3. c)

¹⁷⁴ It should be recalled that, according to Recital 4 ECL, the European Climate Law is the ‘overall framework for the Union’s contribution to the Paris Agreement’

¹⁷⁵ See, for a debate on the role of courts as climate standard-setters, Eloise Scotford, Marjan Peeters, and Ellen Vos, ‘Is legal adjudication essential for enforcing ambitious climate change policies?’ in: Mike Hulme, *Contemporary Climate Change Databases: A Student Primer* (Routledge, 2019) and Laura Burgers, ‘Should Judges Make Climate Change Law?’ (2020) 9(1) *Transnational Environmental Law* 55

environmental standards.¹⁷⁶ Given that the EU is not a party to the European Convention of Human Rights (ECHR), individuals can only bring complaints against the States, and not against the EU as a whole. As an example, six children from Portugal have filed a complaint before the ECtHR alleging that 33 European countries (including the 27 EU Member States) violate their rights by failing to make deep and urgent emission cuts.¹⁷⁷ This case, which has been declared admissible and is given priority, if upheld, will confirm the considerable role of the ECtHR as a climate standard-setter at the national level.

In the framework of the European Climate Law, this means that, even though the latter introduces a collective target at EU level, climate litigation before the ECtHR will not be directed towards the EU, but towards individual Member States. Using this path, individuals may resort to the European Climate Law as one of the tools to bring their national governments before the ECtHR for not taking enough action to enshrine or achieve the climate neutrality target, therefore violating their human rights. *A fortiori*, this could foster climate neutrality at the national level. Nonetheless, once again, this remains a possibility and it is still to be seen whether, and to what extent, the ECtHR will engage in this discourse.

4.2.2. The potential of the principle of solidarity

Next to the national sphere, recent developments at EU level point towards another possibility of steering the collective climate neutrality target into individual ones. This is the recourse to the principle of solidarity, which is explicitly mentioned in Article 2(2) ECL.

¹⁷⁶ For an overview of the contribution of the ECtHR case law in the field of environmental law, see Jonathan Verschuuren, 'Contribution of the case law of the European Court of Human Rights to sustainable development in Europe' in: W. Scholtz, J. Verschuuren (eds.), *Regional Integration and Sustainable Development in a Globalised World* (Edward Elgar Publishers, 2014). More specifically, about the relationship between climate change litigation and the ECHR, see Therese Karlsson Niska, 'Climate Change Litigation and the European Court of Human Rights - A Strategic Next Step?' (2020) 13 *Journal of World Energy Law and Business*, 331

¹⁷⁷ Ole W Pedersen, 'The European Convention of Human Rights and Climate Change – Finally!' EJIL:Talk! Blog, 22 September 2020, available at <<https://www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/>> accessed on 20 May 2021

Recently, the Advocate General (AG) Campos Sánchez-Bordona has delivered an Opinion in the case C-848/19 P *Germany v Poland*,¹⁷⁸ which is pending a judgment and relates to the justiciability of the principle of solidarity as codified in Article 194 TFEU (energy solidarity).¹⁷⁹ To put it in context, the judgment subject to appeal, the case T-883/16 *Poland v Commission*,¹⁸⁰ was about the use by third parties of the OPAL (Ostsee-Pipeline-Anbindungsleitung) natural gas pipeline. The Commission approved a decision by the German regulatory authority granting a Russian natural gas supplier an exemption to use the OPAL pipeline extensively. This was contested by Poland with the argument that it could result in a decrease in usage of alternative gas transit routes which include Poland, therefore threatening its security of supply, and, more generally, that of the EU by hampering efforts to diversify gas imports. The General Court found for Poland on the ground that the Commission had not complied with the obligations flowing from the principle of energy solidarity¹⁸¹ in the context of security of energy supply.¹⁸² The Court found that the principle ‘may be regarded as significant enough to create legal consequences’¹⁸³ both ‘horizontally (between Member States or between institutions) and vertically (between the EU and its Member States)’,¹⁸⁴ and that the Commission failed in taking the principle of solidarity into account to assess the impact of such decision in Poland and the EU’s security of supply.¹⁸⁵

Against this background, the AG, after an examination of the principle of solidarity in primary law and case law,¹⁸⁶ not only upholds the General Court’s judgment, but goes beyond by confirming that the principle of energy solidarity is, *in general*,¹⁸⁷ and not only in the context of security of supply, ‘justiciable and, accordingly, capable of legal

¹⁷⁸ Opinion of the Advocate General Campos Sánchez-Bordona delivered on 18 March 2021 on the case Case C-848/19 P, *Germany v Poland* [2021] ECLI:EU:C:2021:218

¹⁷⁹ Article 194(1) TFEU: ‘In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, *in a spirit of solidarity between Member States*, to: (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks’ [emphasis by author]

¹⁸⁰ CJEU, Case T-883/17, *Poland v Commission* [2019] ECLI:EU:T:2019:567

¹⁸¹ *Ibid*, paragraph 83

¹⁸² *Ibid*, paragraph 73

¹⁸³ *Ibid*, paragraph 70

¹⁸⁴ *Ibid*, paragraph 60

¹⁸⁵ *Ibid*, paragraphs 79-85

¹⁸⁶ Opinion of the Advocate General on the case C-848/19 P, *Germany v Poland* (op. cit.), paragraphs 53-73

¹⁸⁷ *Ibid*, paragraphs 76 and 77

application'.¹⁸⁸ According to him, this extends to all objectives of the European Union's energy policy contained in Article 194 TFEU, which are 'increasingly interlinked with environmental protection'¹⁸⁹ given the recent developments in EU legislation,¹⁹⁰ amongst which it is now possible to include the European Climate Law.¹⁹¹

If the justiciability of the principle is upheld by the Court, there can be far-reaching consequences depending on the reading of the solidarity principle, either as a 'box-ticking' exercise', with the EU institutions and the Member States merely having to make sure that they mention the principle of solidarity in their assessments;¹⁹² or as a 'pandora's box' of situations in which the principle of energy solidarity will come into play and require case-by-case consideration.¹⁹³ Given the importance of the energy policy for the achievement of climate neutrality,¹⁹⁴ if the Court engages with the latter view, and follows the AG's reasoning that the principle of energy solidarity should be read in general and not only in the context of security of supply, this raises an important question related to climate policy: would this mean that Member States could be taken to Court for their failure to make a fair contribution to Union-wide energy decarbonisation targets?¹⁹⁵

¹⁸⁸ Ibid, paragraph 99

¹⁸⁹ Ibid, paragraph 82

¹⁹⁰ The AG in footnote 59 makes a reference to different legislative instruments that underline the connection between energy policy and environmental protection, i.a., 'Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ 2018 L 328, p. 1), and documents COM(2020) 80 final of 4 March 2020, Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation 2018/1999 ('European Climate Law') and COM(2019) 640 final of 11 December 2019, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal'.

¹⁹¹ This link is explicitly mentioned in Recital 6(a) ECL, according to which: 'In light of the importance of energy production and consumption on greenhouse gas emissions, it is essential to ensure a transition to a safe, sustainable, affordable and secure energy system relying on the deployment of renewables, a well-functioning internal energy market and the improvement of energy efficiency, while reducing energy poverty.'

¹⁹² Max Münchmeyer, 'The Future of Energy Solidarity', EUI Florence School of Regulation Blog, 17 May 2021, available at <<https://fsr.eui.eu/the-future-of-energy-solidarity/>>, accessed on 19 June 2021

¹⁹³ Talus K, 'The interpretation of the principle of energy solidarity – A critical comment on the Opinion of the Advocate General in OPAL' (The Oxford Institute for Energy Studies, 2021)

¹⁹⁴ Which is stressed Recital 6(a) ECL (op. cit.)

¹⁹⁵ Question raised by Max Münchmeyer in 'Supercharging Energy Solidarity? The Advocate General's Opinion in Case C-848/19 P Germany v Poland' European Law Blog, 9 April 2021, available at <<https://europeanlawblog.eu/2021/04/09/supercharging-energy-solidarity-the-advocate-generals-opinion-in-case-c-848-19-p-germany-v-poland/>> accessed on 15 May 2021

Even more broadly, it could be argued that the justiciability of the principle of solidarity should not be limited to the energy field, but extended to the climate field, especially considering the abovementioned references of AG Campos Sánchez-Bordona to environmental considerations. Following this line of argumentation, could the binding obligation of solidarity as stressed in Article 2(2) ECL¹⁹⁶ with a Union-level target (that of climate neutrality) open the door to the Commission or Member States to bring another Member State under the CJEU for failure to fulfil obligations, i.e., not making enough progress within their jurisdiction to contribute to achieving the collective target?

The answer to these questions is uncertain. It is still to be seen what degree of differentiation between Member States in relation to efforts to reduce emissions and create absorption of GHG is still possible and justifiable in the long term; and to what extent the CJEU will engage with such reading of the principle of solidarity in the *Germany v Poland* case. It is also still to be seen whether this principle of solidarity argument will be brought before the CJEU with regards to the European Climate Law, and whether the reading of the principle of solidarity as established in the ECL will be similar to the one proposed by the Advocate General for energy solidarity. In our view, given the urgency and seriousness of the climate change problem, it would not be surprising that climate litigation would develop in a way that the questions posed above would be answered on the positive. If so, a justiciable principle of solidarity in the framework of the ECL could become a source for requiring Member States to make more reduction and absorption efforts, which would contribute not only to the achievement of the collective target of climate neutrality, but also to eventually reach climate neutrality at Member State level.

This is, however, not exempted from challenges. As stated above, the Commission or another Member State are the only ones entitled to bring an action for failure to fulfil obligations before the CJEU.¹⁹⁷ As for the Commission, it already has the task of assessing whether a Member State is taking sufficient efforts towards the collective

¹⁹⁶ Article 2(2) ECL: ‘The relevant Union institutions and the Member States shall take the necessary measures at Union and national level respectively, to enable the collective achievement of the climate-neutrality objective set out in paragraph 1, taking into account the *importance of promoting both fairness and solidarity among Member States* and cost-effectiveness in achieving this objective’ [emphasis by author]

¹⁹⁷ The Commission (Article 258 TFEU) and the Member States (Article 259 TFEU) are the only actors entitled to bring a Member State under the Court for its failure to fulfil an obligation under the Treaties (infringement procedure).

achievement of climate neutrality, adopting recommendations in case of insufficient action.¹⁹⁸ These recommendations are not binding, hence not directly enforceable, so the CJEU does not, in principle, have jurisdiction over the degree of climate ambition of the Member States. In this sense, *when* and *how* the Commission could bring the principle of solidarity argument, is open to discussion. Could the Commission launch an infringement procedure after the adoption of a recommendation, given that a Member State does not comply with it, utilising Article 2(2) ECL and the principle of solidarity argument?¹⁹⁹ Or, could the infringement procedure be brought based solely on compliance with the principle of solidarity of Article 2(2) ECL, without recourse to a previous recommendation? On top of this, the CJEU would have to transform the principle of solidarity of the ECL, which is presented in vague terms, into a duty susceptible to compliance by the Member States.

These questions and considerations will, once again, only be solved over time. What is clear, is that the principle of solidarity as established in Article 2(2) ECL has a certain potential to be used as an argument for requiring more stringent action by national governments to achieve the collective target of climate neutrality, which could, at the same time, contribute to the achievement of climate neutrality at Member State level.

5. CONCLUSION

This thesis started by posing the question of how the two forms of the climate neutrality target, namely at Union or at Member State level, are to be understood, particularly in view of EU primary law and recent litigation and governance developments. The answer to this question is, however, not straightforward. The novelty of the climate neutrality target in the EU and the fact that the object of this research concerns proposed and not adopted targets makes it difficult to give a direct answer.²⁰⁰ Instead, this thesis has aimed at exploring the two approaches to climate neutrality from an EU law perspective by

¹⁹⁸ Article 6 ECL

¹⁹⁹ This would entail that the Commission would transform the soft law character of its own recommendations into hard law.

²⁰⁰ The adoption of the European Climate Law, and therefore, of the climate neutrality target, has occurred in July 2021, which is outside the timeline of research of this thesis, comprised between October 2020 to May 2021.

creating a discussion around three sub-research questions, for which some key takeaways can be extracted.

Firstly, on the grounds for the choice of a different climate neutrality target, the main takeaway is that there is a lack of clear explanation on why the EU institutions have proposed a different form of climate neutrality, which is regrettable given the far-reaching consequences of an economy-wide target as the one at stake. It should be recalled in this regard that already the Proposal for a European Climate Law stressed that all sectors of the economy shall contribute to the climate neutrality target,²⁰¹ something that has remained in the European Climate Law.²⁰² A thorough analysis of the Proposal, the institutions' amendments, and diverse preparatory documents to the Proposal has shed, however, some light on the grounds for this divergence.

As for climate neutrality at Union level, the Commission did not conduct a specific impact assessment nor specified in the Proposal the reasons for its choice; and the Council only followed the Commission's view on this regard. Surprisingly, it was the EESC that provided with some more clarity as to the choice for a collective target. All in all, the grounds for this approach can be summarised as follows: it allows for cost-effective options at EU level, it is more politically acceptable by the Member States, it represents a 'continuity approach' to existing climate legislation, and it is suitable with the EU's commitment to become climate neutral under the Paris Agreement.

As for climate neutrality at Member State level, it is noteworthy that the Parliament, despite proposing a more novel approach – an exclusively national economy-wide target – was not clear on the reasons for its choice either. In sum, the EP presented this approach because it allows the EU Member States to grow at the same pace, because it is suitable with the Member States' commitment under the Paris Agreement to become climate neutral, and most importantly, because having national targets can prevent evasion of responsibility.

Secondly, when assessing both approaches in light of primary law, the main takeaway is that, even though both the Proposal and the ECL are based on Article 192(1) TFEU, the overall aim of climate neutrality – notwithstanding its form – suits best with the use of

²⁰¹ Recital 16 Proposal for a European Climate Law

²⁰² Recital 3(e) ECL

Article 192(2) TFEU as the legal basis. This is because the European Climate Law, as a framework law that is intended to affect all sectors of the economy, is likely to affect the Member States' choice between different energy sources – even their structure of energy supply – and also land use and country planning, which are two thresholds of paragraph 2 of Article 192 TFEU. The fact that Article 192(2) TFEU is better equipped as a legal basis for the overall aim of the European Climate Law does not entail, however, that Article 192(1) TFEU is not at all possible. This holds true, at least, for the collective climate neutrality target – the one adopted and codified –, but not for climate neutrality at the national level, which is more intrusive in Member States' competences. In fact, in our view, the EP was risking its position as co-legislator when proposing this form of climate neutrality.

An opposite conclusion is reached, however, when examining Article 193 TFEU and climate neutrality. While for climate neutrality at national level the use of more stringent protective measures by Member States does not present major challenges, a collective target poses certain hurdles to those Member States wanting to go further. The reason is that the collective target – as codified now – allows and promotes the use of cost-effective options, whose content and importance has not yet been defined by the EU institutions and needs clarification. If Member States' more stringent action would jeopardise cost-effectiveness at EU level, it is to be seen to what extent this more stringent action would be allowed. Future research could delve into this role of cost-effectiveness in the European Climate Law, and into the interplay between cost-effectiveness and more stringent protective measures by Member States.

Thirdly, the role that the two forms of climate neutrality play and could play in the EU is not yet set in stone. The European Climate Law has enshrined climate neutrality at Union level and has introduced a soft-law approach to compliance with this target by the Member States, which in principle entails the dismissal of national targets of climate neutrality. However, recent governance and litigation developments point to the possibility that climate neutrality at the national level could still play a significant role in the following decades. The adoption of national legislation enshrining the climate neutrality target at the Member State level is one example of this. Another one, is the trend in strategic climate litigation in which national governments are more and more brought before national courts for their insufficient action in the climate field, for which the European Climate Law itself could serve as a benchmark to assess the national

governments' action. Moreover, the principle of solidarity, as codified in Article 2(2) ECL, could also, given the recent Opinion of AG Campos-Sánchez Bordona in the case *Germany v Poland*, contribute to requiring Member States to make more reduction and absorption efforts in their territories. Only time will say whether, and how, these and future developments will influence and shape the climate neutrality target, for what further research is and will be needed.

In closing, how the two forms of the climate neutrality target, namely at Union and at Member State level, are to be understood, is something open to discussion. It depends on how the EU will steer towards this goal, on how the Member States will take action for the achievement of climate neutrality, on how the judiciary, both at EU and at Member State level, will consider the climate neutrality targets. A straight answer awaits new developments, clarification from the EU institutions as to the meaning of the climate neutrality target and the use of cost-effective options, and future research on how climate neutrality will impact the EU in general, and the EU legal order in particular. What is clear, is that the European Climate Law has codified a collective target whose implications still need to be fleshed out, and that the pursuit of climate neutrality at national level does not end with the European Climate Law but needs to be taken into further consideration. Then, it will be possible to say in 2050 that the EU has developed from a Coal and Steel Community, to a Climate Neutral Union, and, potentially, to a group of Climate Neutral countries.

Bibliography

1. PRIMARY SOURCES

1.1. Legislation

International Agreements

Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016)

EU Treaties

Consolidated version of the Treaty on European Union of 26 October 2012, [2012] OJ C326

Consolidated version of the Treaty on the Functioning of the European Union of 26 October 2012, [2012] OJ C326

Secondary EU legislation

Directive (EU) 2018/410 of the European Parliament and of the Council to enhance cost-effective emission reductions and low-carbon investments [2018] OJ L 76/3

Regulation (EU) 2018/841 of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework [2018] OJ L 156/1

Regulation (EU) 2018/842 of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 [2018] OJ L 156/26

Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action [2018] OJ L 328/1 (Governance Regulation)

Provisional agreement on the Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999, (European Climate Law) [2020], available at <<https://data.consilium.europa.eu/doc/document/ST-8440-2021-INIT/en/pdf>>

National legislation

German Climate Action Law, Gesetzesentwurf der Bundesregierung, Entwurf eines ersten Gesetzes zur Änderung des Bundes-Klimaschutzgesetzes (KSG), Bearbeitungsstand: 11.05.2021

Spanish Climate Action Law, Ley 7/2021, de 20 de mayo, de cambio climático y transición energética (BOE num. 121, from 21/05/2021), available at <<https://www.boe.es/buscar/act.php?id=BOE-A-2021-8447>>

1.2. Case law

Court of Justice of the European Union

CJEU, Case C-203/96, *Dusseldorf and Others* [1998] ECLI:EU:C:1998:316

CJEU, Case C- 64/09, *Commission v France* [2010] ECR I- 3283

CJEU, Case C-5/16, *Poland v European Parliament and Council* [2018] ECLI:EU:C:2018:483

CJEU, Case T-883/17, *Poland v Commission* [2019] ECLI:EU:T:2019:567

Opinion of the Advocate General Campos Sánchez-Bordona delivered on 18 March 2021 on the case Case C-848/19 P, *Germany v Poland* [2021] ECLI:EU:C:2021:218

National jurisprudence

District Court of The Hague, *Urgenda Foundation v The State of the Netherlands*, Case No C/09/456689 /HA ZA 13-1396, 24 June 2015 (unofficial translation available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196>>)

Court of Appeal of The Hague, *The State of the Netherlands (Ministry of Infrastructure and the Environment) v Urgenda Foundation*, Case No C/09/456689 / ha za 13-1396, 9 October 2018 (unofficial translation available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610>>)

Supreme Court of the Netherlands, *The State of the Netherlands v Urgenda Foundation*, Case No 19/00135, 20 December 2019 (unofficial translation available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>>)

Conseil d'État (France), Commune de Grande-Synthe v. France, Conseil d'Etat (France), 19 November 2020, n° 427301

Administrative Court of Paris, Notre Affaire à Tous and Others v. France 4th Section, 3 February 2021, n° 1904967, 1904968, 1904972 et 1904976/4-1 (unofficial translation available at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210203_NA_decision-1.pdf)

BVerfG Beschl. v. 24.05.2021 - 1 BvR 2665/18, Rn. (English translation at Press Release No. 31/2021 of 29 April 2021, 'Constitutional complaints against the Federal Climate Change Act partially successful', available at <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html> >)

1.3. EU institutional documents

Commission, 'A Clean Planet for all: A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy' COM (2018) 773 final

Commission, 'In depth analysis in support of the Commission Communication COM(2018) 773, a Clean Planet for All' (2018) Available at https://ec.europa.eu/clima/sites/default/files/docs/pages/com_2018_733_analysis_in_support_en_0.pdf

European Parliament resolution of 14 March 2019 on climate change – a European strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy in accordance with the Paris Agreement (2019/2582(RSP))

Conclusions of the European Council meeting on 12 December 2019, EUCO 29/19, available at <https://data.consilium.europa.eu/doc/document/ST-29-2019-INIT/en/pdf>

Commission, 'The European Green Deal' COM (2019) 640 final

Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)' COM (2020) 80 final

Commission, 'Stepping up Europe's 2030 climate ambition. Investing in a climate-neutral future for the benefit of our people' COM (2020) 562 final

Commission, ‘Impact assessment accompanying the communication Stepping up Europe’s 2030 climate ambition, Investing in a climate-neutral future for the benefit of our people’ SWD (2020) 176 final

Commission, ‘Commission Work Programme 2021: A Union of vitality in a world of fragility’ COM (2020) 690 final

European Parliament, ‘Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)’ [2020] A9-0162

Amendments adopted by the European Parliament on 8 October 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] P9_TA 0253

Amendments adopted by the Council of the European Union on 17 December 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] 14171/20

Jytte Guteland, ‘Draft report on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)’ (COM(2020)0080 – C9-0077/2020 – 2020/0036(COD))

Opinion of the European Committee of the Regions 324/10 — European Climate Law: establishing the framework for achieving climate neutrality [2020] OJ C324/58

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 [2020] NAT/784

Reasoned opinion (subsidiarity principle) of the Dutch Senate on the EU proposal for a regulation establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (COM(2020)80), 26 May 2020, courtesy translation. Available at <<https://secure.ipex.eu/IPEXL-WEB/scrutiny/COD20200036/nleer.do>>

Opinion of Foreign and European Union Affairs Committee of the Senate of the Republic of Poland on the proposal for a regulation of the European Parliament and of the Council establishing a framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) COM(2020)80 adopted at the sitting on 2 June 2020, available at <<https://secure.ipex.eu/IPEXL-WEB/scrutiny/COD20200036/plsen.do>>

Note from the General Secretariat of the Council to the Council, regarding the Partial General Approach of the Council in the context of the Proposal for a European Climate Law, 19 October 2020, document number 12083/20, point 11 available at <<https://data.consilium.europa.eu/doc/document/ST-12083-2020-INIT/en/pdf>>

Statement by Sweden, Luxembourg, Denmark, Spain and Austria regarding the partial general approach agreed by the Council on 23 October 2020 on the Proposal for a European Climate Law, available at <<https://data.consilium.europa.eu/doc/document/ST-12261-2020-ADD-1/en/pdf>>

2. SECONDARY SOURCES

Books and chapters of books

Alogna I, Bakker C, and Gauci J-P, ‘Climate Change Litigation: Global Perspectives – an Introduction’ in: Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.) *Climate Change Litigation: Global Perspectives* ((Brill | Nijhoff, 2021)

Anker HT, ‘Competences for EU Environmental Legislation: About Blurry Boundaries and Ample Opportunities’, in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar 2020)

Bakker C, ‘Climate Change Litigation in the Netherlands: The Urgenda Case and Beyond’ in: Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.), *Climate Change Litigation: Global Perspectives* (Brill | Nijhoff, 2021)

Brosset E and Maljean-Dubois S, ‘The Paris Agreement, EU Climate Law and the Energy Union’ in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar 2020)

Craig P and De Búrca G, *EU Law: Text, Cases, and Materials* (Sixth edition, Oxford University Press, 2015)

Delbeke J and Vis P, *Towards a Climate-Neutral Europe: Curbing the Trend* (Routledge, 2020)

Eliantolino M and Peeters M, *Research Handbook on EU Environmental Law* (Edward Elgar Publishing, 2020)

Morgera E., ‘Environmental law’, in: Catherine Barnard and Steve Peers (eds), *European Union Law* (Second Edition, Oxford University Press, 2018)

Reins L, ‘Where Eagles Dare: How Much Further May EU Member States Go under Article 193 TFEU?’ in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar, 2020)

Torre-Schaub M, ‘Climate Change Litigation in France: New Perspectives and Trends’ in: Ivano Alogna, Christine Bakker, and Jean-Pierre Gauci (eds.), *Climate Change Litigation: Global Perspectives* (Brill | Nijhoff, 2021)

Scholtz W and Verschuuren J (eds.), *Regional Integration and Sustainable Development in a Globalised World* (Edward Elgar Publishers, 2014)

Squintani L, Holwerda M and de Graaf K, ‘Regulating Greenhouse Gas Emissions from EU ETS Installations: What Room is Left for the Member States?’ In: Marjan Peeters, Mark Stallworthy, and Javier de Cendra de Larragan (eds) *Climate Law in EU Member States – Towards National Legislation for Climate Protection* (Edward Elgar, 2012)

Scotford E, Peeters M, and Vos E, ‘Is legal adjudication essential for enforcing ambitious climate change policies?’ in: Mike Hulme, *Contemporary Climate Change Databases: A Student Primer* (Routledge, 2019)

Verschuuren J, ‘Contribution of the case law of the European Court of Human Rights to sustainable development in Europe’ in: W. Scholtz, J. Verschuuren (eds.), *Regional Integration and Sustainable Development in a Globalised World* (Edward Elgar Publishers, 2014)

Weishaar ES, ‘EU Emissions Trading – Its Regulatory Evolution and the Role of the Court’ in Marjan Peeters and Mariolina Antolino (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing, 2020) 443-458

White S, ‘Impact Assessment – Experience from the European Commission’ in: Kilian Bizer, Sebastian Lechner and Martin Führ (eds), *The European Impact Assessment and the Environment*, (Springer, 2010).

Peer-reviewed articles

Andone C and Greco S, 'Evading the Burden of Proof in European Union Soft Law Instruments: The Case of Commission Recommendations' (2018) 31 *International Journal for the Semiotics of Law* 79

Bertil K and Elgström O, 'Still a green leader? The European Union's role in international climate negotiations' (2010) 45 *Cooperation and Conflict* 255

Burgers L, 'Should Judges Make Climate Change Law?' (2020) 9(1) *Transnational Environmental Law* 55

Fuglestedt J., Rogelj J., Millar R. J., Allen M., Boucher O., Cain M., Forster P. M., Kriegler E. and Shindell, 'Implications of possible interpretations of 'greenhouse gas balance' in the Paris Agreement' (2018), 376 *Philosophical Transactions of the Royal Society, A Mathematical Physical and Engineering Sciences* 1

Genard Q and Gaventa J, 'Energy Union Governance and the European Strategic Vision for a Climate Neutral Economy: How Will They Work Together' (2018) *European Energy Journal* 8

Jordan AJ and Schoenefeld JJ, 'Towards harder soft governance? Monitoring climate policy in the EU' (2020) 22 *Journal of Environmental Policy & Planning* 774

Knodt M and Schoenefeld JJ, 'Harder soft governance in European climate and energy policy: exploring a new trend in public policy' (2020) 22(6) *Journal of Environmental Policy & Planning* 761

Kramer L, 'Planning for Climate and the Environment: the EU Green Deal' (2020) 17 *Journal for European Environmental & Planning Law* 267

Kulovesi K, Oberthür S, 'Assessing the EU's 2030 Climate and Energy Policy Framework: Incremental change toward radical transformation?' (2020) 29 *Review of European, Comparative & International Environmental Law* 151

Montini M, 'The Paris Agreement on climate change: miracle or disaster? (2015) 5 *Environmental Liability*' 161

Niska TK, 'Climate Change Litigation and the European Court of Human Rights - A Strategic Next Step?' (2020) 13 *Journal of World Energy Law and Business*, 331

Oberthür, S and Roche Kelly, C, 'EU Leadership in International Climate Policy: Achievements and Challenges' (2008) 43 *The International Spectator* 35

Peeters M, 'Case Note: Urgenda Foundation and 866 Individuals v The State of the Netherlands: The Dilemma of More Ambitious Greenhouse Gas Reduction Action by EU Member States' (2016) 25(1) *Review of European Community and International Environmental Law* 123

Peeters M, 'EU Climate Law: Largely Uncharted Legal Territory' (2019) 9 *Climate Law* 137

Schoenefeld JJ and Jordan AJ, 'Towards harder soft governance? Monitoring climate policy in the EU' (2020) 22(6) *Journal of Environmental Policy & Planning* 774

Stoczkiewicz M, 'The Climate Policy of the European Union from the Framework Convention to the Paris Agreement' (2018) 15 *Journal for European Environmental & Planning Law* 42

Savaresi A, Perugini L and Chiriaco MV, 'Making sense of the LULUCF Regulation: Much ado about nothing?' (2020) 29 *Review of European, Comparative & International Environmental Law* 212

Voigt G, 'Up in the Air: Aviation, the EU Emissions Trading Scheme and the Question of Jurisdiction' (2012) 14 *Cambridge Yearbook of European Legal Studies* 475

Zahar A, 'Collective obligation and individual ambition in the Paris Agreement' (2020) 9(1) *Transnational Environmental Law* 165

Reports from Think Tanks and Organisations

Duwe M and Evans N, 'Climate Laws in Europe: Good Practices in Net-Zero Management' (Ecologic Institute, 2020)

Erbach G, 'Negative greenhouse gas emissions: assessments of feasibility, potential effectiveness, costs and risks' (Briefing, European Parliamentary Research Service, 2015)

Erbach G, 'EU Legislation in Process: European climate law' (Briefing, European Parliamentary Research Service, 2020)

Erbach G and Victoria GA, 'Carbon dioxide removal: Nature-based and technological solutions' (Briefing, European Parliamentary Research Service, 2021)

Geden O and Schenuit F, ‘Unconventional mitigation: carbon dioxide removal as a new approach in EU climate policy’ (2020) SWP Research Paper 8/2020

Jensen L, ‘EU climate target plan: Raising the level of ambition for 2030’ (Briefing, European Parliamentary Research Service, 2020)

Meyer-Ohlendorf N, ‘A European Climate Law, Analysis of the European Commission Proposal’ (Ecologic Institute, 2020)

Meyer-Ohlendorf N and Bart I, ‘Climate Action Regulation 2.0 – EU Framework for Making Non-ETS Sectors Climate Neutral’ (Ecologic Institute, 2020)

Meyer-Ohlendorf N, Bodle R and Meinecke L, ‘The Future of the EU: Compromises for Expanding Ordinary Legislative Procedure and Majority Voting in Climate and Energy Policies’ (Ecologic Institute, 2020)

Talus K, ‘The interpretation of the principle of energy solidarity – A critical comment on the Opinion of the Advocate General in OPAL’ (The Oxford Institute for Energy Studies, 2021)

Vikolainen V, ‘Initial Appraisal of a European Commission Impact Assessment: Setting the 2030 GHG emissions reduction target’ (Briefing, European Parliamentary Research Service, 2020)

Personal Correspondence

E-mail from Jan Dirx, rapporteur of the EESC Opinion on the Proposal for a European Climate Law, to author, on the grounds for the choice of a Union-wide climate neutrality target for 2050 (9 February 2021)

Email from Michael Bloss, shadow rapporteur of the Parliament’s amendments, to author, on the reasons for the choice of establishing individual national targets (28 January 2021)

Press articles, Websites, and other sources

‘The European Union Continues to Lead the Global Fight against Climate Change’ (Press Corner European Commission), available at

<https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5534> accessed 18 January 2021

‘Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission’ (Press Corner European Commission), available at <https://ec.europa.eu/commission/presscorner/detail/en/speech_19_4230> accessed 18 January 2021

The Commission President Ursula von der Leyen during an extraordinary session to present a Green Deal plan, at the European Parliament in Brussels, Belgium, December 11, 2019, <<https://www.france24.com/en/20191211-eu-european-union-climate-change-green-deal-carbon-neutrality-2050-von-der-leyen-greta-thunberg-un-united-nations-commission-fossil-fuels-carbon-biodiversity-man-on-the-moon>>

NASA, ‘The Causes of Climate Change’ (Global Climate Change, 25 January 2021) <<https://climate.nasa.gov/causes/>> accessed 28 January 2021

‘Impact Assessments’ (Website of the European Commission), available at <https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en>, accessed 12 March 2021

‘EU Emissions Trading System’ (Website of the European Commission), accessed 20 March 2020, available at <https://ec.europa.eu/clima/policies/ets_en>

‘Commission welcomes provisional agreement on the European Climate Law’ (Press Corner European Commission, 21 April 2021) available at <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1828>, accessed 2 May 2021

‘2020 climate & energy package’ (Website of the European Commission), available at <https://ec.europa.eu/clima/policies/strategies/2020_en>, accessed on 30 May 2021

Press release from the Conseil d’État, ‘Greenhouse gas emissions: The Government must justify within 3 months that the reduction path to 2030 can be achieved’ (19 November 2019), available at <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20201119_Not-Yet-Available_press-release.pdf>

Pedersen OW, ‘The European Convention of Human Rights and Climate Change – Finally!’ EJIL:Talk! Blog, 22 September 2020, available at <<https://www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/>> accessed on 20 May 2021

Münchmeyer M in ‘Supercharging Energy Solidarity? The Advocate General’s Opinion in Case C-848/19 P Germany v Poland’ European Law Blog, 9 April 2021, available at <<https://europeanlawblog.eu/2021/04/09/supercharging-energy-solidarity-the-advocate-generals-opinion-in-case-c-848-19-p-germany-v-poland/>> accessed on 15 May 2021

Münchmeyer M, ‘The Future of Energy Solidarity’ EUI Florence School of Regulation Blog, 17 May 2021, available at <<https://fsr.eui.eu/the-future-of-energy-solidarity/>>, accessed on 25 May 2021

Chamon M and Peeters M, ‘The European climate law: too much power for the Commission?’ Maastricht University Blog, 30 March 2020, available at <<https://www.maastrichtuniversity.nl/blog/2020/03/european-climate-law-too-much-power-commission>> accessed on 15 March 2021

Peeters M, ‘Only 29 years to go – The challenging path towards climate neutrality in 2050’ Maastricht University Blog, 18 January 2021, available at <<https://www.maastrichtuniversity.nl/blog/2021/01/only-29-years-go-challenging-path-towards-climate-neutrality-2050>>, accessed 15 March 2021